

1 **BRYAN WESTERFELD (S.B. # 218253)**  
[bwesterfeld@calemployerlaw.com](mailto:bwesterfeld@calemployerlaw.com)  
2 **NICOLE E. WURSHER (S.B # 245879)**  
[nwurscher@calemployerlaw.com](mailto:nwurscher@calemployerlaw.com)  
3 **WALRAVEN & WESTERFELD LLP**  
101 Enterprise, Suite 350  
4 Aliso Viejo, CA 92656  
Telephone: (949) 215-1997  
5 Facsimile: (949) 215-1999

6 **R.J. ZAYED (MN ID #0309849)**  
[zayed.rj@dorsey.com](mailto:zayed.rj@dorsey.com)  
7 **STEPHEN P. LUCKE (MN ID #151210)**  
[lucke.steve@dorsey.com](mailto:lucke.steve@dorsey.com)  
8 **TIMOTHY BRANSON (MN ID #174713)**  
[branson.tim@dorsey.com](mailto:branson.tim@dorsey.com)

9 *Admitted pro hac vice admission pending*  
10 **DORSEY & WHITNEY LLP**  
Suite 1500, 50 South Sixth Street  
11 Minneapolis, MN 55402-1498  
Telephone: (612) 340-2600  
Facsimile: (612) 340-2868

12 Attorneys for Defendant UnitedHealth Group, Inc.;  
13 and Defendants/Counterclaim Plaintiffs  
United Healthcare Services, Inc., UnitedHealthcare  
14 Insurance Company; OptumInsight, Inc.

15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 **ALMONT AMBULATORY SURGERY**  
18 **CENTER, LLC, a California limited liability**  
19 **company; BAKERSFIELD SURGERY**  
20 **INSTITUTE, LLC, a California limited**  
21 **liability company; INDEPENDENT**  
22 **MEDICAL SERVICES, INC., a California**  
23 **corporation; MODERN INSTITUTE OF**  
24 **PLASTIC SURGERY & ANTIAGING, INC.,**  
25 **a California corporation; NEW LIFE**  
26 **SURGERY CENTER, LLC, a California**  
27 **limited liability company, dba BEVERLY**  
28 **HILLS SURGERY CENTER, LLC;**  
**ORANGE GROVE SURGERY CENTER,**  
**LLC, a California limited liability company;**  
**SAN DIEGO AMBULATORY SURGERY**  
**CENTER, LLC, a California limited liability**  
**company; SKIN CANCER &**  
**RECONSTRUCTIVE SURGERY**  
**SPECIALISTS OF BEVERLY HILLS, INC.,**  
**a California corporation; VALENCIA**  
**AMBULATORY SURGERY CENTER,**  
**LLC, a California limited liability company;**  
**WEST HILLS SURGERY CENTER, LLC, a**

Case No 2:14-cv-03053-MWF(VBKx)

**FIRST AMENDED  
COUNTERCLAIM**

(Superior Court of the State of  
California, County of Los Angeles,  
Central District Case Number:  
BC540056)

Complaint filed: March 21, 2014

1 California limited liability company,  
2 PLAINTIFFS,  
3  
4 v.  
5 UNITEDHEALTH GROUP, INC.; UNITED  
6 HEALTHCARE SERVICES, INC.,  
7 UNITEDHEALTHCARE INSURANCE  
8 COMPANY; OPTUMINSIGHT, INC., AND  
9 DOES 1 THROUGH 20,  
10  
11 Defendants.  
12  
13

---

9 UNITED HEALTHCARE SERVICES,  
10 INC.; UNITEDHEALTHCARE  
11 INSURANCE COMPANY;  
12 OPTUMINSIGHT, INC.,  
13  
14 Counterclaim Plaintiffs,  
15  
16 v.  
17 ALMONT AMBULATORY SURGERY  
18 CENTER, LLC, a California limited liability  
19 company; BAKERSFIELD SURGERY  
20 INSTITUTE, LLC, a California limited  
21 liability company; BEVERLY HILLS  
22 SURGERY CENTER, LLC;  
23 INDEPENDENT MEDICAL SERVICES,  
24 INC., a California corporation; MODERN  
25 INSTITUTE OF PLASTIC SURGERY &  
26 ANTIAGING, INC., a California  
27 corporation; NEW LIFE SURGERY  
28 CENTER, LLC, a California limited liability  
company, dba BEVERLY HILLS  
SURGERY CENTER, LLC; ORANGE  
GROVE SURGERY CENTER, LLC, a  
California limited liability company; SAN  
DIEGO AMBULATORY SURGERY  
CENTER, LLC, a California limited liability  
company; SKIN CANCER &  
RECONSTRUCTIVE SURGERY  
SPECIALISTS OF BEVERLY HILLS,  
INC., a California corporation; VALENCIA  
AMBULATORY SURGERY CENTER,  
LLC, a California limited liability company;  
WEST HILLS SURGERY CENTER, LLC,  
a California limited liability company,  
KAMBIZ BENJAMIN OMIDI (A/K/A  
JULIAN OMIDI, COMBIZ OMIDI,  
KAMBIZ OMIDI, COMBIZ JULIAN  
OMIDI, KAMBIZ BENIAMIA OMIDI,  
JULIAN C. OMIDI); MICHAEL OMIDI,

1 M.D.; ALMONT AMBULATORY  
2 SURGERY CENTER, A MEDICAL  
3 CORPORATION; BAKERSFIELD  
4 SURGERY INSTITUTE, INC.; CIRO  
5 SURGERY CENTER, LLC; EAST BAY  
6 AMBULATORY SURGERY CENTER,  
7 LLC; SKIN CANCER &  
8 RECONSTRUCTIVE SURGERY  
9 SPECIALISTS OF WEST HILLS, INC.;  
VALLEY SURGICAL CENTER, LLC;  
TOP SURGEONS, INC.; TOP SURGEONS,  
LLC; TOP SURGEONS LLC (NEVADA);  
WOODLAKE AMBULATORY;  
PALMDALE AMBULATORY SURGERY  
CENTER, A MEDICAL CORPORATION;  
1 800 GET THIN, LLC; SURGERY  
CENTER MANAGEMENT; DOES 1-200,

10 Counterclaim Defendants.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## TABLE OF CONTENTS

2	FIRST AMENDED COUNTERCLAIM .....	1
3	SUMMARY OF ACTION .....	1
4	PARTIES .....	5
5	I.    UNITED .....	5
6	II.   COUNTERCLAIM DEFENDANTS .....	5
7	A.    The Omidis .....	5
8	B.    Top Surgeons .....	6
9	C.    Billing Entities .....	7
10	D.    1-800-GET-THIN .....	7
11	E.    Surgery Centers .....	8
12	JURISDICTION AND VENUE .....	13
13	FACTUAL ALLEGATIONS .....	13
14	I.    COUNTERCLAIM DEFENDANTS' WAIVER OF MEMBER	
15	RESPONSIBILITY AMOUNT MISLEADS UNITED .....	13
16	II.   COUNTERCLAIM DEFENDANTS' CONSPIRACY AND	
17	SCHEME TO DEFRAUD UNITED AND THE UNITED	
18	PLANS THROUGH THE OMIDI NETWORK .....	17
19	A.    Counterclaim Defendants Funnel Patients Into The Vast	
20	Omidi Network of Lap Band Surgery Centers and	
21	Associated Providers Through 1-800-GET-THIN .....	17
22	B.    The Omidis Exercise Control Over the Counterclaim	
23	Defendants and the Omidi Network in The Scheme to	
24	Defraud .....	20
25	i.     The Omidis Operate Counterclaim Defendants	
26	Through a Wide Array of Corporate Entities and a	
27	Close Circle of Individuals.....	20
28	ii.    The Hub of the Omidi Network: 9001 Wilshire	
29	Boulevard, Suite 106 .....	27
30	iii.   The Counterclaim Defendants' Business Addresses	
31	at "The Beverly Hills Postal Place" .....	29
32	iv.    The Counterclaim Defendants Used This Web of	
33	Corporate Entities to Control and Conceal	
34	Payments from United.....	32
35	1.     Members of the Omidi Network Regularly	

1	Endorse Checks Written to Other Entities or Individuals in the Omidi Network .....	39
2	2. Payments to the Counterclaim Defendants Were Routinely Commingled With Other Omidi-Network Entities.....	45
3	v. The Omidis and Their Company, Top Surgeons, Control the Day to Day Operations of the Counterclaim Defendants and Persons and Entities in the Omidi Network.....	48
4		
5	C. Counterclaim Defendants Misrepresented Charges By Failing to Disclose Their Routine Waiver Member Responsibility Amounts, and Performed Unnecessary Services, Submitted Fraudulent Bills, and/or Inflated Charges to Secure Reimbursement for Uncovered Services.....	55
6		
7	i. Counterclaim Defendants Routinely Waived Patient Responsibility Amounts and Engaged in Other Improper Practices.....	58
8	1. United Member 8 .....	58
9	2. United Member 1 .....	66
10	3. United Member 2 .....	70
11	4. United Member 3 .....	72
12	5. United Member 9 .....	74
13	6. United Member 10 .....	76
14	7. United Member 11 .....	77
15	8. United Member 12 .....	79
16	9. United Member 13 .....	81
17	10. United Member 15 .....	83
18		
19	ii. Counterclaim Defendants Concealed Lap Band Surgery on Claims Forms and Instead Billed United Inflate Charges For Hernia Surgery .....	84
20	1. United Member 4 .....	84
21	2. United Member 5 .....	88
22	3. United Member 6 .....	91
23		
24	iii. Counterclaim Defendants Inflated Patients' BMI In An Attempt To Obtain Coverage for Lap Band Services .....	94
25		
26		
27		
28		

1	1. United Member 7 .....	94
2	2. United Member 6 .....	96
3	3. United Member 14 .....	99
4	i. Counterclaim Defendants Submitted Claims and 5 Wrongfully Induced United to Pay Amounts That 6 Were Greater Than their Normal Cash Charges or 7 the Usual, Customary, and Reasonable Charges for 8 the Same Procedures .....	99
9	ii. United Paid Numerous Claims In Good Faith Based 10 On Defendants' Misrepresentations .....	101
11	<b>FIRST CAUSE OF ACTION (Fraud) .....</b>	102
12	<b>SECOND CAUSE OF ACTION (Unfair Business Practices, Business &amp;</b> 13 <b>Professions Code § 17200).....</b>	105
14	<b>THIRD CAUSE OF ACTION (Conspiracy to Commit Fraud) .....</b>	107
15	<b>FOURTH CAUSE OF ACTION (Intentional Interference with Contractual</b> 16 <b>Relationships).....</b>	111
17	<b>FIFTH CAUSE OF ACTION (Restitution under ERISA § 502(a)(3)) .....</b>	112
18	<b>SIXTH CAUSE OF ACTION (For Declaratory and Injunctive Relief under</b> 19 <b>ERISA § 502(a)(3)) .....</b>	118
20	<b>PRAAYER FOR RELIEF .....</b>	120
21		
22		
23		
24		
25		
26		
27		
28		

## **FIRST AMENDED COUNTERCLAIM**

Counterclaim Plaintiffs UNITED HEALTHCARE SERVICES, INC., UNITEDHEALTHCARE INSURANCE COMPANY, AND OPTUMINSIGHT, INC., (collectively “United”) allege, upon personal knowledge and upon information and belief, as follows:

## **SUMMARY OF ACTION**

1. United seeks to recover millions of dollars paid to brothers Julian and Michael Omidi (the “Omidis”) through their 1-800-GET-THIN referral network and network of ambulatory surgical centers and related entities as a result of their unlawful scheme and artifice to defraud United and the health plans insured or administered by United (the “United Plans”) and to illegally enrich themselves through false and fraudulent pretenses, representations, and promises.

2. In its capacities as an insurer and a claims administrator, United is responsible for administering the hundreds of millions of health care claims it receives every year. United is responsible for making efforts to safeguard and protect itself, its members, and the various employer group health benefit plans from fraud, waste, and abuse—like the fraud at issue here. In many instances, however, United must comply with varying and complex laws and regulations dictating the speed at which United must pay these claims. By practical necessity, United reasonably relies in good faith on the claims submitted to it by providers, including Counterclaim Defendants. By submitting the fraudulent and otherwise exorbitant health care claims described in this Counterclaim, Counterclaim Defendants knowingly took advantage of United’s obligations to promptly pay claims.

3. For years, the Counterclaim Defendants acted under the control of the Omidis and in concert with each other to induce (or conspire to induce) patients covered under the United Plans to obtain medical services from them on an out-of-network basis by promising to waive copay, coinsurance, deductibles, and other

1 patient financial responsibility amounts (“Member Responsibility Amounts”), and  
2 then submitting bills to United with overstated and unreasonable charges for these  
3 out-of-network services, which included the secretly-waived patient-responsibility  
4 amounts.

5 4. Consistent with industry practice, the United Plans are commonly  
6 designed with higher patient-responsibility amounts for out-of-network services.  
7 These higher amounts incentivize patients to obtain services on a (less costly) in-  
8 network basis, and serve as a check on the higher charges of out-of-network  
9 providers, who have not otherwise contracted with United for their rate of  
10 reimbursement. To ensure that the United Plans function as intended, the patient-  
11 responsibility amounts are typically a predicate to any responsibility of a United  
12 Plan to provide coverage for services. Thus, if a provider undermines the operation  
13 of the health plan by waiving patient-responsibility, the provider has likewise  
14 negated coverage under the member’s United Plan.

15 5. The Counterclaim Defendants promised patients on a routine basis  
16 that they would waive patient-responsibility amounts and accept, as payment in  
17 full, whatever amount would be paid under their health plan, thereby removing the  
18 patient’s financial incentive to ensure the care is medically appropriate, necessary,  
19 and cost-effective. The Counterclaim Defendants did not disclose these routine  
20 waivers to United and, instead, submitted falsified claim forms that overstated the  
21 total charges for the procedure by, among other things, including the patient-  
22 responsibility amounts as charges, even though the patients would not be charged.  
23 As a direct result of—and in justifiable reliance upon—this false billing, United  
24 was induced to approve claims for payment under the United Plans totaling many  
25 millions of dollars when, in reality, such claims were not covered. The scheme also  
26 resulted in higher utilization of costly out-of-network health services, as patients  
27 were induced to obtain treatments for services that they otherwise would not have  
28

1 sought or paid for, or obtain services at a higher out-of-network cost than they  
2 otherwise would have incurred.

3       6. For example, as alleged in greater detail below, Counterclaim  
4 Defendants told one patient, referred to herein as United Member 8, that her health  
5 benefit plan covered all costs associated with her Lap Band surgery, even though  
6 Counterclaim Defendants learned after checking with United that United Member  
7 8's plan did not cover Lap Band surgery. Counterclaim Defendants, however, told  
8 United Member 8 that her plan covered Lap Band surgery and that she needed to  
9 undergo a variety of costly medical services "in preparation for" such surgery. In  
10 reliance on this representation, United Member 8 underwent an endoscopy and  
11 suffered severe injury. Counterclaim Defendants then billed United an exorbitant  
12 and excessive amount for the endoscopy procedure, which included the waived  
13 Member Responsibility Amounts. Further, Counterclaim Defendants submitted  
14 multiple claims for services that were never rendered, including a nutritionist  
15 consultation, a psychological examination, psychological testing, and an ultrasound,  
16 and inflated the CPT codes billed for other services.

17       7. Likewise, on numerous occasions, Counterclaim Defendants waived  
18 Member Responsibility Amounts and submitted claims for procedures they never  
19 performed, including with respect to United Members 1, 2, 3, 9, 10, 11, 12, 13, and  
20 15 discussed herein.

21       8. In addition to submitting false bills that surreptitiously and  
22 fraudulently charged United for amounts due from the members, the Counterclaim  
23 Defendants conspired to—and did—submit fraudulent claims to induce United to  
24 pay for Lap Band services that were not covered, never performed, or substantiated  
25 by false medical records. For example, through their Beverly Hills Surgery Center  
26 clinic, the Counterclaim Defendants devised a reason to perform hernia surgeries on  
27 United Members 4 and 5 only after United advised them that Lap Band surgeries  
28 were not covered under plans at issue, and then received payment for the

1 unauthorized Lap Band surgeries by disguising the surgery as hernia repair on  
2 claims submitted to United. On claims forms submitted to United, Counterclaim  
3 Defendants fraudulently concealed that Lap Bands were placed in United Members  
4 4, 5, and 6. In other instances, as with United Members 6, 7, and 14, Counterclaim  
5 Defendants manipulated the reported height, weight, or BMI calculation of United  
6 members to substantiate the performance of Lap Band surgery, when Counterclaim  
7 Defendants knew the United Members' BMI did not meet the coverage provisions  
8 of the plans at issue.

9 9. The Counterclaim Defendants concealed their scheme through various  
10 means, including the creation of hundreds of business organizations, the use of  
11 sham and shifting business addresses and names, and the commingling of funds  
12 paid by United among various entities and bank accounts controlled by the Omidis  
13 or the Counterclaim Defendants, acting in concert with each other. These  
14 organizations operate out of a small number of shared spaces, including the Omidis'  
15 central office at 9001 Wilshire Boulevard, Suite 106, in Beverly Hills, California,  
16 as well as a series of mailboxes rented from public mail and copy stores.

17 10. Unbeknownst to United, Counterclaim Defendants, using the deceptive  
18 corporate and billing practices alleged herein, continued to submit and receive  
19 payment for fraudulent claims, with some claims submitted as late as 2013.

20 11. For these and other acts and omissions as alleged herein, United seeks  
21 damages, restitution, and other relief on behalf of itself and the health plans it  
22 administers for all sums paid to the Counterclaim Defendants as a direct result of  
23 their fraudulent scheme and billings to United as set forth more fully herein. United  
24 also seeks (1) injunctive relief to stop Counterclaim Defendants from continuing  
25 their wrongful conduct, (2) a declaration that any unpaid claims submitted by  
26 Counterclaim Defendants are not payable, and (3) injunctive relief precluding the  
27 Counterclaim Defendants from profiting from their promise to induce participants  
28

1 into receiving care by promising to waive co-pays, co-insurance and other forms of  
2 patient responsibility in return for the United members' decision to obtain services.  
3

## 4 **PARTIES**

### 5 **I. UNITED**

6 12. Counterclaim Plaintiff UNITED HEALTHCARE SERVICES, INC. is  
7 a Minnesota Corporation with its principal place of business in Minnetonka,  
8 Minnesota.

9 13. Counterclaim Plaintiff UNITEDHEALTHCARE INSURANCE  
10 COMPANY is a Connecticut Corporation with its principal place of business in  
11 Hartford, Connecticut.

12 14. Counterclaim Plaintiff OPTUMINSIGHT, INC. is a Delaware  
13 Corporation with its principal place of business in Eden Prairie, Minnesota.

### 14 **II. COUNTERCLAIM DEFENDANTS**

#### 15 **A. The Omidis**

16 15. KAMBIZ BENJAMIN OMIDI A/K/A JULIAN OMIDI, COMBIZ  
17 OMIDI, KAMBIZ OMIDI, COMBIZ JULIAN OMIDI, KAMBIZ BENIAMIA  
18 OMIDI, JULIAN C. OMIDI ("Julian Omidi") is an individual who is a citizen of  
19 California. Julian Omidi was at one time licensed to practice, and did practice,  
20 medicine in the State of California, but the Medical Board of the State of California  
21 revoked Julian Omidi's physician and surgical license in June 2009. Among other  
22 things, the Medical Board of the State of California found that Julian Omidi (1)  
23 "perpetrated a fraud" on the Board by failing to disclose information; (2) committed  
24 "misrepresentation and dishonesty . . . go[ing] to the core of his ability to practice  
25 his profession"; and (3) has a "penchant for dishonesty, to bend his position and  
shade his statements to suit his needs, without consistent regard for the truth."

26 16. MICHAEL OMIDI, M.D. is an individual who is a citizen of  
27 California. United is informed and believes that Michael Omidi holds a current  
28 physician and surgical license in the State of California. In June 2008, the State of

1 California revoked Michael Omidi's physician and surgical license, but the  
2 revocation was stayed pending successful completion of a three-year probationary  
3 period which Michael Omidi, upon information and belief, successfully completed.  
4 In April 2013, the Medical Board of the State of California formally accused  
5 Michael Omidi of "repeated acts of negligence in the care and treatment of patient  
6 G.B." These allegations are still pending.

7       17. As alleged below in more detail, the Omidis have used a sophisticated  
8 network of health care providers and other corporate entities, along with a close  
9 circle of individuals, to create a lucrative enterprise that defrauded the public,  
10 United, and health plans out of millions of dollars through a web of fraudulent  
11 practices. This network of corporate entities, health care providers, employees,  
12 administrators, agents, and co-conspirators will be referred to as the "Omidi  
13 Network." Each of the Counterclaim Defendants is operated or controlled by the  
14 Omidis and acts in concert with and is part of this Network.

15       **B. Top Surgeons**

16       18. TOP SURGEONS, INC. is a California corporation with its principal  
17 place of business in California. According to Secretary of State records signed by  
18 Michael Omidi, TOP SURGEONS, INC. was organized and incorporated in 2006  
19 by Michael Omidi, who is also the CEO. His brother, Julian Omidi, is the registered  
20 agent.

21       19. As Organizer/Incorporator, Michael Omidi converted TOP  
22 SURGEONS, INC. to TOP SURGEONS, LLC, a California limited liability  
23 company with its principal place of business in California, in 2008. TOP  
24 SURGEONS, LLC operated at the same business address as its predecessor.

25       20. TOP SURGEONS, LLC ("Top Surgeons Nevada") is a Nevada limited  
26 liability company. According to Nevada Secretary of State records signed by Julian  
27 Omidi, Top Surgeons Nevada was organized by its Manager, Julian Omidi, in  
28 December of 2008. In January of 2009, Julian Omidi was also registered with the

1 Nevada Secretary of State as the President and Registered Agent for Top Surgeons  
2 Nevada. Subsequent Secretary of State filings signed by Julian Omidi in  
3 September 2009 and February 2011 confirm that Julian Omidi remained the  
4 Manager of Top Surgeons Nevada through at least the end of 2011.

5 21. Collectively, these entities will be referred to herein as “Top  
6 Surgeons.”

7 **C. Billing Entities**

8 22. INDEPENDENT MEDICAL SERVICES, INC. (“IMS”) is a  
9 California corporation with its principal place of business in California. Records  
10 maintained by the National Provider Identifier (“NPI”) Registry<sup>1</sup> and the California  
11 Medical Board reflect that Michael Omidi is the President of IMS and that IMS  
12 operates out of the same business address as many of the other Counterclaim  
13 Defendants. Further, Secretary of State records reflect that IMS is organized or  
14 operated by persons or entities who are, as described below, associated with and  
15 controlled by the Omidis.

16 23. SURGERY CENTER MANAGEMENT, LLC (“Surgery Center  
17 Management”) is a California limited liability company with its principal place of  
18 business in California. Records maintained by the California Secretary of State  
19 reflect that Surgery Center Management operates out of the same address as many  
20 of the other Counterclaim Defendants and is organized or operated by persons or  
21 entities who are, as described below, associated with and controlled by the Omidis.

22 **D. 1-800-GET THIN**

23 24. 1-800-GET-THIN, LLC (“1-800-GET-THIN”) is a California limited  
24 liability company with its principal place of business in California. Records

---

26 <sup>1</sup> The National Provider Identifier (“NPI”) is a unique, 10-digit identification  
27 number that the Center for Medicaid and Medicare Services assigns to every  
28 covered health care provider in the country. The NPI Registry allows the public to  
search for a provider’s name, address, authorized official, and other information  
associated with a specific NPI number.

1 maintained by the California Secretary of State reflect that 1-800-GET-THIN and is  
2 organized or operated by persons or entities who are part of the Omidi Network.  
3

4 **E. Surgery Centers**

5 25. ALMONT AMBULATORY SURGERY CENTER, A MEDICAL  
6 CORPORATION is a California corporation with its principal place of business in  
7 California. According to Secretary of State records signed by Michael Omidi,  
8 Michael Omidi is the CEO of ALMONT AMBULATORY SURGERY CENTER,  
9 A MEDICAL CORPORATION and his mother, Cindy Omidi, is the registered  
10 agent. Records maintained by the NPI Registry reflect that Michael Omidi is the  
11 President of Almont Ambulatory Surgery Center, Inc. d/b/a Top Surgeons, which  
12 is, upon information and belief, the same corporate entity as ALMONT  
13 AMBULATORY SURGERY CENTER, A MEDICAL CORPORATION.

14 26. On December 16, 2009, ALMONT AMBULATORY SURGERY  
15 CENTER, A MEDICAL CORPORATION was converted to ALMONT  
16 AMBULATORY SURGERY CENTER, LLC, a California limited liability  
17 company with its principal place of business in Beverly Hills, California.  
18 ALMONT AMBULATORY SURGERY CENTER, LLC operates at the same  
19 business address as its predecessor. Collectively these entities will be referred to  
20 herein as "Almont ASC."

21 27. BAKERSFIELD SURGERY INSTITUTE, INC. is a California  
22 corporation with its principal place of business in California. According to  
23 Secretary of State records, Michael Omidi is the Organizer/Incorporator and CEO  
24 of BAKERSFIELD SURGERY INSTITUTE, INC. His mother, Cindy Omidi, is  
25 the registered agent.

26 28. On June 20, 2008, Michael Omidi, as Organizer/Incorporator,  
27 converted BAKERSFIELD SURGERY INSTITUTE, INC. to BAKERSFIELD  
28 SURGERY INSTITUTE, LLC, a California limited liability company with its  
principal place of business in California. Records maintained by the NPI Registry

1 reflect that these entities have the same mailing address. Collectively these entities  
2 will be referred to herein as “Bakersfield Surgery Institute.”

3 29. BEVERLY HILLS SURGERY CENTER, LLC (“Beverly Hills  
4 Surgery Center”) is a California limited liability company with its principal place of  
5 business in California. Records maintained by the NPI Registry reflect that Beverly  
6 Hills Surgery Center operates out of the same business address as many of the other  
7 Counterclaim Defendants. Further, California Secretary of State records reflect that  
8 Beverly Hills Surgery Center is operated by persons or entities who are, as  
9 described below, associated with and controlled by the Omidis.

10 30. CIRO SURGERY CENTER, LLC (“Ciro Surgery Center”), is a  
11 California limited liability company with its principal place of business in  
12 California. Records maintained by the California Secretary of State reflect that  
13 Ciro Surgery Center operates out of the same business address as many of the other  
14 Counterclaim Defendants, and is operated by persons or entities who are, as  
15 described below, associated with and controlled by the Omidis.

16 31. EAST BAY AMBULATORY SURGERY CENTER, LLC (“East Bay  
17 ASC”), is a California limited liability company with its principal place of business  
18 in California. Secretary of State records reflect that East Bay ASC is operated by  
19 persons or entities who are, as described below, associated with and controlled by  
20 the Omidis.

21 32. MODERN INSTITUTE OF PLASTIC SURGERY & ANTIAGING,  
22 INC. (“Modern Institute”), is a California corporation with its principal place of  
23 business in Beverly Hills, California. Secretary of State records reflect that Modern  
24 Institute is operated by persons or entities who are, as described below, associated  
25 with and controlled by the Omidis.

26 33. NEW LIFE SURGERY CENTER, LLC d/b/a BEVERLY HILLS  
27 SURGERY CENTER, LLC (“New Life Surgery Center”), is a California limited  
28 liability company with its principal place of business in Beverly Hills, California.

1 Records maintained by the California Secretary of State and the NPI Registry  
2 reflect that New Life Surgery Center is operated by persons or entities who are, as  
3 described below, associated with and controlled by the Omidis.

4 34. ORANGE GROVE SURGERY CENTER, LLC (“Orange Grove  
5 Surgery Center”) is a California limited liability company with its principal place of  
6 business in California. Records maintained by the California Secretary of State  
7 reflect that Orange Grove Surgery Center operates out of the same business address  
8 as many of the other Counterclaim Defendants, and is operated by persons or  
9 entities who are, as described below, associated with and controlled by the Omidis.

10 35. PALMDALE AMBULATORY SURGERY CENTER, A MEDICAL  
11 CORPORATION is a California corporation with its principal place of business in  
12 California. Records maintained by the California Secretary of State reflect that  
13 Michael Omidi organized/incorporated PALMDALE AMBULATORY SURGERY  
14 CENTER, A MEDICAL CORPORATION and serves as its CEO. The NPI  
15 Registry also reflects that Michael Omidi is the Owner of Palmdale Ambulatory  
16 Surgery Center, which is, upon information and belief, the same corporate entity.

17 36. On June 20, 2008, Michael Omidi, as Organizer/Incorporator,  
18 converted PALMDALE AMBULATORY SURGERY CENTER, A MEDICAL  
19 CORPORATION to PALMDALE AMBULATORY SURGERY CENTER, LLC,  
20 a California limited liability corporation with its principal place of business in  
21 California. PALMDALE AMBULATORY SURGERY CENTER, LLC operated at  
22 the same business address as its predecessor. Collectively, these entities will be  
23 referred to herein as “Palmdale ASC.”

24 37. SAN DIEGO AMBULATORY SURGERY CENTER, LLC (“San  
25 Diego ASC”), is a California limited liability company with its principal place of  
26 business in California. Records maintained by the California Secretary of State  
27 reflect that San Diego ASC operates out of the same business address as many of  
28

1 the other Counterclaim Defendants and is operated by persons or entities who are,  
2 as described below, associated with and controlled by the Omidis.

3 38. SKIN CANCER & RECONSTRUCTIVE SURGERY SPECIALISTS  
4 OF BEVERLY HILLS, LLC, is a California limited liability company with its  
5 principal place of business in Beverly Hills, California. Records maintained by the  
6 California Secretary of State and the NPI Registry reflect that SKIN CANCER &  
7 RECONSTRUCTIVE SURGERY SPECIALISTS OF BEVERLY HILLS, LLC  
8 was organized/incorporated by its “owner” Michael Omidi.

9 39. SKIN CANCER & RECONSTRUCTIVE SURGERY SPECIALISTS  
10 OF WEST HILLS, INC., is a California corporation with its principal place of  
11 business in California. Records maintained by the California Secretary of State and  
12 the NPI Registry reflect that SKIN CANCER & RECONSTRUCTIVE SURGERY  
13 SPECIALISTS OF WEST HILLS, LLC was organized/incorporated by its  
14 “Medical Director” Michael Omidi. Collectively these entities will be referred to  
15 herein as “Skin Cancer Surgery Specialists.”

16 40. VALENCIA AMBULATORY SURGERY CENTER, LLC (“Valencia  
17 ASC”), is a California limited liability company with its principal place of business  
18 in California. Records maintained by the California Secretary of State and the NPI  
19 Registry reflect that Valencia ASC was organized/incorporated by Julian Omidi,  
20 and that his mother, Cindy Omidi, serves as its Executive Director.

21 41. VALLEY SURGICAL CENTER, LLC (“Valley Surgical Center”), is  
22 a California limited liability company, with its principal place of business in  
23 California. Records maintained by the California Secretary of State reflect that  
24 Valley Surgical Center operates out of the same business address as many of the  
25 other Counterclaim Defendants, and is operated by persons or entities who are, as  
26 described below, associated with and controlled by the Omidis.

27 42. WEST HILLS SURGERY CENTER, LLC (“West Hills Surgery  
28 Center”), is a California limited liability company with its principal place of

1 business in California. Records maintained by the California Secretary of State and  
2 the NPI Registry reflect that West Hills Surgery Center operates out of the same  
3 business addresses as many of the other Counterclaim Defendants and is operated  
4 by persons or entities who are, as described below, associated with and controlled  
5 by the Omidis.

6 43. WOODLAKE AMBULATORY SURGERY CENTER, A MEDICAL  
7 CORP. is a California corporation with its principal place of business in California .  
8 Records maintained by the California Secretary of State and the NPI Registry  
9 reflect that WOODLAKE AMBULATORY SURGERY CENTER, A MEDICAL  
10 CORP. was organized/incorporated by Michael Omidi, its CEO and  
11 Owner/Operator.

12 44. WOODLAKE AMBULATORY SURGERY CENTER, LLC is a  
13 California limited liability company with its principal place of business in  
14 California and was organized/incorporated by Michael Omidi, its Owner Operator.  
15 WOODLAKE AMBULATORY SURGERY CENTER, LLC is, upon information  
16 and belief, the successor to WOODLAKE AMBULATORY SURGERY CENTER,  
17 A MEDICAL CORP. Collectively, these entities will be referred to as "Woodlake  
18 ASC."

19 45. The true names and capacities, whether individual, corporate, associate  
20 or otherwise, of Does 1-200, inclusive, are unknown to United, who therefore sues  
21 these parties by such fictitious names. United is informed and believes that each of  
22 the entities designated as a Doe is a resident of, or business entity doing business in,  
23 the State of California, is part of the Omidi Network, is responsible in some manner  
24 for the events and happenings referred to herein, and proximately caused injury and  
25 damages to United.

26 46. All of the parties listed in Paragraphs 15-45 above shall be collectively  
27 referred to as the "Counterclaim Defendants." All of the Counterclaim Defendants  
28 acting as a corporation, limited liability company, or other association, including

1 those referred to in Paragraphs 18-44 shall be referred to collectively as the  
2 “Corporate Counterclaim Defendants.”

3 47. Each of the Corporate Counterclaim Defendants is under the operation,  
4 direction, or control of the Omidis.

5 **JURISDICTION AND VENUE**

6 48. Because several of the counterclaims raised in this matter arise under  
7 federal law, this Court has jurisdiction to hear them under 28 U.S.C. § 1331 and 29  
8 U.S.C. § 1332(e)(1). Further, because the counterclaims arise out of the same  
9 transaction or occurrence that are the subject matter of the Plaintiffs’ Complaint,  
10 this Court has jurisdiction over the claims set forth in the counterclaim pursuant  
11 Fed. R. Civ. P. 13 and the supplemental jurisdiction provisions of 28 U.S.C. § 1337.

12 49. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1331(b)  
13 because any or all of the Counterclaim Defendants reside in this judicial district, all  
14 Counterclaim Defendants are residents of the State of California, and a substantial  
15 part of the events or omissions giving rise to the claim occurred in this judicial  
16 district.

17 50. Counterclaim Plaintiffs have submitted to personal jurisdiction of this  
18 Court by filing their Counterclaim in this Court.

19 **FACTUAL ALLEGATIONS**

20 **I. COUNTERCLAIM DEFENDANTS’ WAIVER OF MEMBER  
21 RESPONSIBILITY AMOUNTS MISLEADS UNITED**

22 51. United is an insurer and third party claims administrator for employer  
23 group health plans, which are sponsored by employers and provide health benefits  
24 to their covered employees and dependents. The health plans sponsored by private  
25 employers are governed by ERISA, 29 U.S.C. § 1001 *et. seq* (the “ERISA Plans”),  
26 while those sponsored by governmental employers and certain religious  
27 organizations are exempted from ERISA’s jurisdiction. United provides insurance  
28 and/or administrative services to these employer-sponsored health plans, including

1 (subject to the terms of the individual's plan and associated agreements) the  
2 processing of claims for reimbursement of medical services provided to the  
3 individuals covered by these benefit plans ("United members"). For the United  
4 Plans that are insured directly by United ("insured plans"), benefit payments are  
5 made from United's own funds. For those self-funded benefit plans for which  
6 United acts only as claims administrator, and not insurer, benefit payments are  
7 made from plan funds provided by the employer-sponsor of the self-funded plans.  
8 United's contractual agreements with the employer-sponsors of such self-funded  
9 plans typically specifically grant United the authority to recover overpayments,  
10 including through litigation, on behalf of the self-funded plans.

11       52. The terms of the specific health benefit plan through which a United  
12 member is covered, when United is the insurer or claims administrator, determines  
13 whether medical services are covered by the plan and thus are reimbursable  
14 ("Covered Services"). The plan also determines the extent to which the United  
15 member bears responsibility for a portion of the charge through a copayment,  
16 coinsurance, deductible amount, or other Member Responsibility Amounts.

17       53. The amount paid by United for Covered Services also depends on  
18 whether the services were provided by an in-network or out-of-network provider.  
19 In-network providers have generally agreed to accept a contracted rate from United  
20 in exchange for participation in United's network. Members who choose an in-  
21 network provider are generally assured that, for covered services, their  
22 responsibility for payment is limited to any applicable copayment, coinsurance and  
23 deductible amount provided in their plan. Out-of-network benefits do not include  
24 this assurance. Accordingly, patients may be "balance billed" by their out-of-  
25 network providers for the difference between their charges and any reimbursement  
26 paid by United. Moreover, Member Responsibility Amounts are typically lower for  
27 in-network services than for out-of-network services.

1       54. Although there are some differences under the various health benefit  
2 plans, out-of-network providers are generally reimbursed by United for a certain  
3 percentage of “eligible expenses,” which are determined based on the total amount  
4 charged and the usual, customary, and reasonable charges in the relevant area for  
5 the services at issue, as determined by United in its discretion, or a percentage of  
6 the Medicare-approved rate, or a percentage of the billed charges, or an applicable  
7 industry agreement.

8       55. The Counterclaim Defendants submitted numerous bills to United  
9 using either a standard (1) CMS-1500 claim form (formerly HCFA-1500) or (2)  
10 UB-04 claim form (formerly UB-92), both of which require providers to describe  
11 the services provided and procedures performed using certain mandated coding  
12 regimes. These are forms approved and generated in connection with the federal  
13 Medicare program, and it is common in the health care industry for these same  
14 forms to be used in connection with other governmental and non-governmental  
15 insurance.

16       56. The CMS-1500 and UB-04 forms also call for the provider to submit  
17 its “Charges” or “Total Charge(s)” for each service or procedure and list the  
18 “balance due” or “est. amount due.” The Counterclaim Defendants routinely  
19 submitted CMS-1500 and UB-04 claim forms to United with amounts for  
20 “Charges” or “Total Charge(s)” that included the Member Responsibility Amounts,  
21 even though the Counterclaim Defendants had previously told the patients that  
22 Member Responsibility Amounts would be waived. These claim forms and the  
23 misrepresentations therein by the Counterclaim Defendants regarding their  
24 “Charges” or “Total Charge(s)” were false and misleading. The Counterclaim  
25 Defendants submitted these forms to United, intending for United to rely on the  
26 truth and accuracy of the information submitted.

27       57. The Office of Inspector General for the Department of Health and  
28 Human Services has issued a Special Fraud Alert, specifying that a Medicare

1 provider who routinely waives patient responsibility amounts and then submits its  
2 charges on CMS-1500 and UB-04 claim forms, which include the waived amounts,  
3 is misstating its charge and committing fraud. These same practices by the  
4 Counterclaim Defendants and the same misstatement of their charges on the same  
5 CMS-1500 and UB-04 claim forms submitted to United were likewise fraudulent,  
6 just as they are for patients who are covered by Medicare.

7 58. United reasonably relied on the false and misleading claim information  
8 submitted by the Counterclaim Defendants regarding their charges and the  
9 procedures performed, which resulted in the approval of payments to the  
10 Counterclaim Defendants totaling more than \$43,000,000 that would not otherwise  
11 have been approved. United did so without knowledge of the routine promises by  
12 the Counterclaim Defendants to their patients to waive Member Responsibility  
13 Amounts. Such promises generally negate the purpose of Member Responsibility  
14 Amounts under the United Plans, meaning that the Counterclaim Defendants  
15 received millions of dollars for services that are not, in fact, covered by health  
16 benefit plans under which such payments were made.

17 59. United receives nearly two million health care claims per day and must  
18 comply with various laws and regulations mandating that such claims be paid  
19 within a short period of time. By practical necessity, United must reasonably and in  
20 good faith rely on the veracity of the descriptions of the services rendered as stated  
21 on the claims form and the amount of the bill submitted by the provider for each  
22 service. The Counterclaim Defendants took advantage of United's efforts to  
23 process claims expeditiously and in compliance with such laws and regulations by  
24 repeatedly submitting false and misleading claim forms to United that intentionally  
25 overstated the amount charged. United relied upon the veracity and truthfulness of  
26 the Counterclaim Defendants' communications about their billed charges in making  
27 these payments.

1       60. The Counterclaim Defendants also used their routine waiver of  
2 Member Responsibility Amounts to inflate their bills.. Having been lured to the  
3 Omidi Network by the promise of having no responsibility to pay for a portion of  
4 the medical services, the patients no longer acted as a check on the charges of the  
5 Counterclaim Defendants or the use of their services, as they would have if the  
6 patients had an obligation to contribute up to 20%-50% of the payment to the  
7 Counterclaim Defendants.

8       61. United has previously provided to counsel for the Counterclaim  
9 Defendants a confidential electronic spreadsheet of claims listing claims totaling  
10 over \$43,000,000 that were paid as a direct result of the waiver of Member  
11 Responsibility Amounts, as well as the other fraudulent billings as alleged below,  
12 by the Counterclaim Defendants. This spreadsheet included the patient name, date  
13 of service, procedure code, and amount paid for each claim. A non-confidential  
14 version of this spreadsheet, with columns reflecting patient names and provider TIN  
15 numbers removed, is attached as Appendix I hereto. This Appendix also includes  
16 the policy or plan name under which each patient was covered. Due to the Omidis'  
17 fraudulent scheme, United is continuing to uncover additional claims and payments  
18 which may supplement those disclosed to Counterclaim Defendants and contained  
19 on Appendix I.

20 **II. COUNTERCLAIM DEFENDANTS' CONSPIRACY AND SCHEME  
21 TO DEFRAUD UNITED AND THE UNITED PLANS THROUGH THE  
22 OMIDI NETWORK**

23       A. **Counterclaim Defendants Funnel Patients Into The Vast Omidi  
24 Network of Lap Band Surgery Centers and Associated Providers  
25 Through 1-800-GET-THIN**

26       62. Since at least 2006, the Omidis used their vast network of corporate  
27 entities, including Counterclaim Defendants, to create a lucrative illegal enterprise  
28 that has defrauded the public, United, and the United Plans out of millions of

1 dollars though a web of fraudulent practices, in violation of various state and  
2 federal laws.

3 63. More specifically, the medical providers in the Omidi Network are  
4 ambulatory surgery centers that specialize in outpatient laparoscopic gastric  
5 banding surgeries – a short, outpatient surgery by which a silicon “Lap Band” is  
6 inserted laparoscopic ally around the patient’s stomach to control hunger. Through  
7 these ambulatory surgery centers, as well as other affiliated clinics, labs, and other  
8 healthcare service providers situated throughout Southern California, Counterclaim  
9 Defendants also provided ancillary services that were often promoted and  
10 recommended to patients as related to, or in preparation for, the Lap Band surgery,  
11 including lab testing, sleep studies, ultrasounds, esophagogastroduodenoscopies  
12 (also known as “EGDs”), and cosmetic surgery.

13 64. To funnel patients into the Omidi Network, the Counterclaim  
14 Defendants have long advertised their services to consumers on billboards, TV,  
15 radio, print ads, the internet, and social media across Southern California though the  
16 “1-800-GET THIN” marketing campaign. In a series of articles about the Omidi  
17 Network, the *Los Angeles Times* referred to the ads as “blanket[ing] Southern  
18 California freeway billboards and broadcast airwaves,” and stated that the ad  
19 campaign was “as inescapable . . . as smog in summer.” This advertising campaign  
20 touts, among other things, that prospective patients will receive high-quality Lap  
21 Band procedures.

22 65. When a prospective patient calls the 1-800-GET-THIN telephone  
23 number, the call is directed to a call center, which is, upon information and belief,  
24 operated and controlled by the Omidis and the Counterclaim Defendants through  
25 the Omidi Network. Call center employees then direct potential patients to attend  
26 “free” informational “seminars,” which feature a physician contracted with the  
27 Counterclaim Defendants who speaks to the benefits of the Lap Band surgery.

28 66. At these “free” informational meetings, the Counterclaim Defendants

1 (through the Omidi Network) induce potential patients to obtain medical treatments,  
2 including Lap Band surgery, through, among other things, unlawful promises to  
3 provide the medical services free of charge to patients, thereby waiving all  
4 coinsurance, deductible, and copay amounts, and to accept as full payment for the  
5 patients' services whatever amounts the Counterclaim Defendants obtain from the  
6 patients' United Plans.

7 67. Once the Counterclaim Defendants convince a prospective patient to  
8 receive health services, Counterclaim Defendants perform a series of pre-  
9 determined medical services, including sleep studies, EGDs, abdominal  
10 ultrasounds, and myriad lab tests. Counterclaim Defendants (through the Omidi  
11 Network) told patients and United Members that these services were necessary as  
12 part of the preparation for the Lap Band surgery.

13 68. After a patient has called to inquire about treatment from Counterclaim  
14 Defendants, the Counterclaim Defendants conspire to engage in various fraudulent  
15 practices designed to manipulate United to pay for services that were not medically  
16 necessary, never provided, or not covered by the terms of the United Plans. For  
17 instance, as demonstrated through the exemplar United Members 1-15 identified  
18 herein, Counterclaim Defendants misrepresented the services performed by billing  
19 for services that were never provided or billing under an incorrect CPT code, hid  
20 services that would not be Covered Services under the terms of the United Plans,  
21 and misrepresented the patients' BMI calculations on medical records submitted to  
22 United. The Counterclaim Defendants also submitted grossly excessive claims to  
23 United (including in many cases over \$140,000 for a service that usually costs  
24 between \$14,000-\$20,000).

25 69. While some patients terminated their medical relationship with  
26 Counterclaim Defendants without undergoing the Lap Band surgery, many United  
27 Members underwent Lap Band surgery at the Counterclaim Defendants' surgery  
28 centers.

1       70. In addition to the named Counterclaim Defendants, Does 1-200 are  
2 unnamed LLCs and Corporations used by the Omidis to further their conspiracy to  
3 defraud patients, claims administrators, health plans, and insurers by using new  
4 business organizations in an attempt to evade detection by insurers and claims  
5 administrators such as United and to induce United to pay claims that would  
6 otherwise not have been paid.

7           **B. The Omidis Exercise Control Over the Counterclaim Defendants**  
8           **and the Omidi Network in The Scheme to Defraud**

9           **i. The Omidis Operate Counterclaim Defendants Through a**  
10           **Wide Array of Corporate Entities and a Close Circle of**  
11           **Individuals**

12       71. For a number of years, and continuing today, Julian and Michael  
13 Omidi have operated, either individually or through corporate entities such as Top  
14 Surgeons, a network of surgical centers and affiliated health care and service  
15 providers, including all of the Counterclaim Defendants in this matter. These  
16 entities have provided medical and administrative services to United members  
17 throughout Southern California since at least 2006. The Counterclaim Defendants  
18 receive referrals for United members who respond to the 1-800-GET-THIN  
19 marketing campaign, which is, upon information and belief, operated and controlled  
20 by the Omidis and the Counterclaim Defendants through the Omidis. As alleged  
21 herein, the Counterclaim Defendants bill for these services through Counterclaim  
22 Defendants IMS and Surgery Center Management, among others. The Omidis  
23 control the activities of all other Counterclaim Defendants in this matter, through  
24 their individual actions, and their ownership and control of various entities and  
25 individuals.

26       72. As discussed in more detail below, the Omidis have established  
27 hundreds of corporate entities intended to conduct and conceal the fraudulent  
28 activities of Counterclaim Defendants, including the Omidis. The Omidis have

1 used this collection of corporate entities, which operate as a single network, to  
2 conceal and commingle fraudulently-obtained funds, including funds paid by  
3 United.

4       73. As is further detailed below, United is informed and believes that the  
5 Omidis, Top Surgeons, associated individuals, and related corporate entities, own  
6 and operate clinics and health care providers in violation of California's statutes  
7 precluding the corporate practice of medicine.

8       74. In fact, these affiliated entities and the Omidis have been the subject of  
9 at least nine lawsuits, including several wrongful death and personal injury  
10 lawsuits, two whistleblower lawsuits brought by former employees, and one lawsuit  
11 brought by four physicians formerly affiliated with the Omidi Network. According  
12 to the *Los Angeles Times*, the Omidis are currently the subject of investigations by  
13 the FBI, the U.S. Food and Drug Administration, the California Department of  
14 Insurance, and the Los Angeles Police Department.

15       75. The Omidis have carried out their conspiracy and scheme and artifice  
16 to defraud United through a wide-reaching network of hundreds of health care  
17 service providers, corporate entities, and individuals that expands far beyond the  
18 entities that are named in this action.

19       76. The Omidis have maintained a close circle of individuals who  
20 conspired with and aided and abetted the Omidis to defraud United, the United  
21 Plans, and other health plans and insurers. The Omidis and their agents, including  
22 Thomas Cloud, Maureen Jaroscak, Charles Klasky, Robert Macatangay, Araminta  
23 Salazar, Dr. Elliot Alpert, Dr. Ryan Stanton, Cindy Omidi, Shawn Pezeshk, Robert  
24 Silverman, and Alexander Weisse, who, on information and belief, have acted in  
25 concert and conspired to create a complicated network of hundreds of corporate  
26 entities designed to, among other things, conceal the true nature of their activities  
27 (including the fraudulent billing scheme alleged herein), conceal payments, conceal  
28 assets, and conceal the Omidis' ownership and control of the enterprise. United is

1 informed and believes that these activities were all undertaken for the purpose of  
2 furthering the Omidis' fraud on United, other insurance companies, and other health  
3 plans.

4 77. Cloud, Jaroscak, Macatangay, Salazar, Alpert, Stanton, Klasky,  
5 Pezeshk, Silverman, and Cindy Omidi are named in corporate records as  
6 incorporators, owners, CEOs, Presidents, Managers, and Executive Directors for  
7 many of the Counterclaim Defendants, including:

- 8 a) Bakersfield Surgery Institute (Michael Omidi –  
9 Organizer/Incorporator, Alpert – CEO, Cloud – Director),
- 10 b) Beverly Hills Surgery Center (Cloud – Organizer/Incorporator,  
11 Macatangay – CEO, Salazar – Administrator, Abaca – Manager),
- 12 c) Ciro Surgery Center (Jaroscak – signatory on Secretary of State  
13 records, Alpert – CEO),
- 14 d) East Bay ASC (Jaroscak – signatory on Secretary of State  
15 records, Pezeshk – CEO, Cindy Omidi – Executive Director),
- 16 e) IMS (Jaroscak – signatory on Secretary of State records, Alpert  
17 – CEO and Medical Director, Michael Omidi – President),
- 18 f) Modern Institute (Stanton – President & CEO),
- 19 g) New Life Surgery Center (Jaroscak – signatory on Secretary of  
20 State records, Pezeshk – CEO, Cindy Omidi – Executive Director),
- 21 h) Orange Grove Surgery Center (Jaroscak – signatory on  
22 Secretary of State records, Pezeshk – CEO, Robert Silverman – Attorney),
- 23 i) San Diego ASC (Jaroscak – signatory on Secretary of State  
24 records, Pezeshk – CEO, Cindy Omidi – Executive Director),
- 25 j) Skin Cancer Surgery Specialists (Michael Omidi –  
26 Organizer/Incorporator and Owner, Jaroscak – signatory on Secretary of State  
27 records, Pezeshk – CEO),
- 28 k) Surgery Center Management (Klasky – CEO),

1) Valencia ASC (Julian Omidi – Organizer/Incorporator, Jaroscak – signatory on Secretary of State records, Pezeshk – CEO, Cindy Omidi – Executive Director),

m) Valley Surgical Center (Jaroscak – signatory on Secretary of State records, Pezeshk – CEO, Cindy Omidi – Executive Director, Alpert - Member), and

n) West Hills Surgery Center (Jaroscak – signatory on Secretary of State records, Pezeshk – CEO, Salazar – Administrator).

78. These individuals also serve as corporate representatives for hundreds of additional entities that have acted in concert with the Counterclaim Defendants to defraud United and that are ultimately controlled by the Omidis. Many of these entities are identified on **Exhibits A and B** hereto, and share bank accounts with Counterclaim Defendants other entities within the Omidi Network, as reflected on **Exhibit E**. Upon information and belief, these entities were also used to conceal ownership, activities, payments, assets, and further the fraud on United.

a) For example, United is informed and believes that the Omidis conspired with Alpert, Jaroscak, Weisse, and others to create dozens of shell companies that were used to elude detection by United and conceal their fraudulent scheme.

i. These corporations, which have been registered with the California Medical Board, the California Secretary of State, and the NPI Registry, are each named using the first two letters of an Omidi physician's first and last name (e.g., ATMA Medical, Inc. for Atul Madan, M.D.), and are registered with the California Medical Board as fictitiously-named, physician-owned corporations run by Dr. Elliot Alpert.

ii. Separately, the Omidis obtained authorization from the physicians, surgeons, and other medical professionals working in their clinics to submit claims on behalf of the medical professionals to insurers, including United,

and further obtained the medical professionals' assignment of all payments related to such claims.

iii. The Omidis or others under their control then used these shell companies to submit claims to United for reimbursement for services provided at Counterclaim Defendant surgical centers by medical professionals who had separately assigned payments for such claims to the Omidis. This arrangement effectively enabled the Omidis to conceal the true source of claims submitted to United while at the same time allowing the Omidis to collect United's payment for such claims.

iv. Unaware of this fraudulent scheme, United wrote checks to a number of these entities, including, for example:

- a. ATMA Medical, Inc., purportedly for the services of Atul Madan, M.D.;
- b. GEME Ultrasound, Inc., purportedly for the services of George Mednik MD;
- c. IRSC Medical, Inc., purportedly for the services of Ira Schwals, M.D.;
- d. JODE Medical, Inc., purportedly for the services of John Debranto, M.D.;
- e. JOOG Medical, Inc., purportedly for the services of John Ogai, M.D.;
- f. JUGE Medical, Inc., purportedly for the services of Julius Wah Gee, D.O.;
- g. RASH Medical, Inc., purportedly for the services of Ramin Shamtob, M.D.; and
- h. ROAZ Medical, Inc., purportedly for the services of Robert Azizi, M.D.

v. United's checks written to these entities were funneled into bank accounts shared with other Counterclaim Defendants and members of the Omidi Network, including Wells Fargo Account N (as referenced herein).

vi. Further, California Secretary of State records show that Omidi co-conspirator Alexander Weisse organized/incorporated each of these entities, Omidi co-conspirator Maureen Jaroscak signed their corporate registration papers, and Omidi co-conspirator Dr. Elliot Alpert served as their CEO, and that each of these entities maintain their “principal executive office” at a rented mailbox at the Beverly Hills Postal Place, 269 S. Beverly Drive, No. 1409, Beverly Hills, CA 90212. Further, records maintained by the NPI Registry and the California Medical Board show that Dr. Elliot Alpert is the “President” of each of these entities and that they operate from the Omidi hub at 9001 Wilshire Avenue, Suite 106, Beverly Hills, CA 90211. In fact, none of the servicing physicians are NPI authorized officials for these entities, and certain of these physicians have filed a lawsuit challenging the establishment and operation of these entities.

b) By further example, Julian Omidi organized and incorporated Pacific West Dermatology, Inc., a Medical Corp., with the California Secretary of State in April 2001; Michael Omidi was the CEO, and their mother, Cindy Omidi, was the registered agent. Julian Omidi also registered with the NPI Registry as “Owner Operator.” This entity, which operated from the Omidi “hub” at 9001 Wilshire Boulevard, was dissolved in 2008, but, in 2010, Cloud registered Pacific West Dermatology LLC with the California Secretary of State, with Klasky as the named member. The LLC entity operated from a rented mailbox at the Beverly Hills Postal Place, located at 269 S. Beverly Drive. United has made multiple payments to Pacific West Dermatology, including one payment with the alternate payee as Alexander Weisse, Esq.

c) Finally, Robert Silverman, who at times relevant hereto operated Counterclaim Defendant 1-800-GET-THIN, also served as the NPI “authorized

1 “official” for Counterclaim Defendant Orange Grove Surgery Center, which was  
2 organized by Omidi associates Jaroscak and Pezeshk. Additionally, Silverman  
3 serves as the NPI authorized official Bay Sleep Centers, LLC and FAZA Dietetics,  
4 LLC, both of which were organized by Omidi associates, including Weisse,  
5 Jaroscak, and Klasky.

6 79. As discussed in more detail below and demonstrated on **Exhibits A**  
7 and **B**, many of the unnamed co-conspirator entities received payments from  
8 United for services associated with the 1-800-GET-THIN campaign and the  
9 Counterclaim Defendant surgery centers, or were operated out of the Omidis’  
10 office. United is informed and believes that these corporate entities are all  
11 controlled by the Omidis and Counterclaim Defendants and have acted in concert  
12 and conspired to conceal fraudulent activities from United, to submit fraudulent  
13 bills to United, and to funnel funds paid by United to the Counterclaim Defendants,  
14 in furtherance of the wide-ranging fraud on United. United has discovered more  
15 than 240 of these entities, many of which are identified throughout this  
16 Counterclaim.

17 80. Even today, Counterclaim Defendants continue to obfuscate the true  
18 nature of their corporate enterprise. In March 2014, the Omidis, or others under  
19 their direction and control, registered a number of new entities with the NPI  
20 Registry, listing Maureen Jaroscak as the Chief Financial Officer. The “Business  
21 Address” for each of these entities is a single mailbox, number 479, rented from  
22 “Mail Box Times” located at 9461 Charleville Blvd., Beverly Hills, CA, 90212.  
23 The “Practice Address” registered for each of these entities corresponds with the  
24 address of one of the Counterclaim Defendant surgery centers. For example,  
25 Meadow Surgical Center LLC’s registered Practice Address is 25776 McBean  
26 Pkwy, Suite 108, Valencia, CA 91355—the location of Counterclaim Defendant  
27 Valencia ASC. Likewise, Salus Medical Services, Inc.’s registered Practice  
28 Address is 1980 N. Orange Grove Ave, Pomona, CA 91767—the location of

1 Counterclaim Defendant Orange Grove Surgery Center. And, Springhill Surgery  
2 Center, LLC's registered "Practice Address" is 9610 Stockdale Hwy Suite A,  
3 Bakersfield, CA 93311—the location of Counterclaim Defendant Bakersfield  
4 Surgery Institute.

5 **ii. The Hub of the Omidi Network: 9001 Wilshire Boulevard,  
6 Suite 106**

7 81. 9001 Wilshire Blvd., Beverly Hills, CA 90211, is a three-story medical  
8 office building. As demonstrated in further detail below, continuously from at least  
9 August of 2005 to the present, Suite No. 106 at 9001 Wilshire Boulevard has been  
10 occupied by the Omidis and members of the Omidi Network, and has served as the  
11 hub of the Omidi Network and its illegal and fraudulent activities. The complete  
12 list of Omidi Network entities that United has thus far uncovered as having  
13 operated from Suite 106, at some point between August 2005 to the present, is  
14 attached hereto as **Exhibit A**.

15 a) The Omidis' business, Top Surgeons, has been operating from  
16 Suite 106 since 2006 and continues to operate from that address today.

17 b) Since at least 2007, both Michael and Julian Omidi have listed  
18 Suite 106 as their individual "Practice Address" with the NPI Registry.

19 c) Between August 2005 to 2013, Counterclaim Defendant surgery  
20 centers Almont ASC, Beverly Hills Surgery Center, Skin Cancer Surgery  
21 Specialists, and New Life Surgery Center operated from and performed a variety of  
22 medical services at Suite 106.

23 d) During this same time period, United communicated through  
24 claim forms, explanations of benefits, correspondence, and accreditation records,  
25 with various Counterclaim Defendants at Suite No. 106.

26 e) The building's directory shows that Suite No. 106 is currently  
27 occupied by Counterclaim Defendant Independent Medical Services.

f) Counterclaim Defendant surgical centers East Bay ASC, San Diego ASC, Bakersfield Surgery Institute, and Palmdale ASC have reported on documents submitted to the California Secretary of State and/or the NPI Registry that Suite No. 106 is their mailing address or principal executive office address.

g) Additionally, records maintained by the NPI registry and the California Secretary of State show that Suite 106 is the practice location, business address, principal executive office, or mailing address for more than one hundred additional entities, as reflected on **Exhibit A**. Many of these records were signed by the Omidis themselves, including the records establishing the Top Surgeons entities.

82. As described above and reflected on **Exhibit A** hereto, Julian Omidi, Michael Omidi, or one of their co-conspirators is listed on corporate records as the President, CEO, owner, or operator of all of these entities.

83. The Counterclaim Defendants were able to use this wide network of like-named, shifting entities to submit claims for services to elude detection by United as being fraudulent or not covered.

a) As an example of the shifting corporate structure that United believes to be pervasive throughout the Omidi enterprise, the Omidis operated Counterclaim Defendant Almont ASC at 9001 Wilshire Blvd., Suite 106, Beverly Hills, CA 90211 beginning in 2005. After conducting an inspection of Almont ASC's facility in 2009, the United States Department of Health and Human Services (Centers for Medicare & Medicaid Services) uncovered numerous deficiencies, including unsanitary conditions, deficient hiring and training of medical personnel, deficient storage and collection of medical records, and a failure of the facility to assess "the quality of care provided, including the medical necessity of the procedures performed." As a result of these deficiencies, Almont ASC was terminated from the Medicare program. Nonetheless, the Omidis continued operating the center at the same address under a new name, Beverly Hills

Surgery Center, LLC, a/k/a New Life Surgery Center, LLC. United is further informed and believes that the Omidis have repeatedly used this shifting corporate structure and the various corporate entities under their control, including the Corporate Counterclaim Defendants, to elude detection by United and induce United to pay claims that would otherwise not have been paid.

b) The Counterclaim Defendants and the Omidis also use these corporate entities and their identifying information, such as names, addresses, Tax Identification Numbers and NPI numbers, interchangeably on insurance claims, business cards, letterhead, invoices, and other documents and records to confuse or defraud patients and insurance company payors. For example, while NPI numbers are assigned to each unique provider, Beverly Hills Surgery Center and IMS have submitted claims forms to United purporting to bill under Michael Omidi's NPI number. Likewise, Beverly Hills Surgery Center and Skin Cancer Surgery Specialists have submitted claims forms to United purporting to bill under Counterclaim Defendant Almont ASC's NPI number. Further, with respect to United Member 8 discussed herein, Counterclaim Defendants submitted the same claim under different provider names in an attempt to receive payment for claims that had already been denied. United is still uncovering additional corporate entities which use the NPI numbers assigned to the Counterclaim Defendants surgical centers on bills submitted to United.

iii. **The Counterclaim Defendants' Business Addresses at "The Beverly Hills Postal Place"**

84. Counterclaim Defendants and the larger Omidi Network use rented mailboxes at 269 South Beverly Drive, Beverly Hills, California, 90212, to further operate their network of hundreds of corporations and health care service providers.

85. As reflected on **Exhibit B** hereto, the following Counterclaim Defendants have reported to the California Secretary of State that, at some point between 2005 to the present, their principal executive office is 269 S. Beverly

1 Drive, Suite 1409, Beverly Hills, CA 90212: Beverly Hills Surgery Center, East  
2 Bay ASC, IMS, New Life Surgery Center, Orange Grove Surgery Center, San  
3 Diego ASC, Skin Cancer & Reconstructive Surgery Specialists of Beverly Hills,  
4 Skin Cancer & Reconstructive Surgery Specialists of West Hills, Valencia ASC,  
5 Valley Surgical Center, and West Hills Surgery Center. Counterclaim Defendants  
6 have also purported to submit claims and correspondence to United from this  
7 address.

8 86. However, 269 South Beverly Drive is not a medical office building or  
9 a surgical clinic. It is a publicly accessible business known as “Beverly Hills Postal  
10 Place.” It is located approximately one mile from the Omidis’ primary office at  
11 9001 Wilshire Boulevard, Suite 106. In addition to the various mail and copy  
12 services offered by the Beverly Hills Postal Place, the public can rent “private”  
13 mailboxes “with a prestigious Beverly Hills street address.” The website for  
14 Beverly Hills Postal Place, [www.mailboxesbeverlyhills90212.com](http://www.mailboxesbeverlyhills90212.com), states:  
15

16 Our most popular service is the private mail boxes with an  
17 impressive Beverly Hills street address (not a P.O. box number)  
18 in either the well known 90210 or 90212 zip codes – all with  
24/7 access and worldwide mail forwarding. ....

19 When you rent a private mailbox at Beverly Hills Postal Place,  
20 your address is:

21 269 South Beverly Drive. # \_\_\_\_\_  
22 Beverly Hills, CA 90212

23 87. As further reflected on **Exhibit B**, this same mailbox at the Postal  
24 Place was also used as the “principal executive office” address for nearly 100  
25 additional corporate entities during this same time period, all of which were, upon  
26 information and belief, operated and controlled by the Omidis or Counterclaim  
27 Defendants and used to further the Counterclaim Defendants’ scheme to defraud  
28 United.

1       88. The Counterclaim Defendants and other members of the Omidi  
2 Network have also conducted significant business from mailbox number 353 at the  
3 Beverly Hills Postal Place.

4           a) For example, Counterclaim Defendants have submitted  
5 documents to United authorizing checks for payment of Counterclaim Defendants'  
6 services to be written to individual patients and mailed to 269 S. Beverly Drive,  
7 Suite 353, Beverly Hills, CA 90212 in an effort to further conceal the Omidis'  
8 ownership of these entities and their assets. For instance, Counterclaim Defendants  
9 submitted a form titled "**MAILING ADDRESS FOR PAYMENT OF ALL**  
10 **CHECKS - READ – VERY IMPORTANT,**" states that all checks payable for "the  
11 professional, medical, facility or any other expenses" of United Members should be  
12 mailed, without an "attention" or "to" line or even a corporate entity name, to Suite  
13 353 at the Postal Place.

14           b) Further, mailbox number 353 has served as the home of  
15 Counterclaim Defendants IMS (mailing address), Modern Institute (mailing  
16 address), Surgery Center Management (corporate address), Top Surgeons LLC  
17 (corporate address), and Woodlake ASC (business address), and the following  
18 Omidi owned entities: McBean Surgery Center LLC (business address); Young  
19 Image (business address); Weight Loss Center (business address); Gynecology  
20 Specialists LLC (business address); No More Poverty, Inc. (corporate address);  
21 Pacific West Dermatology LLC (mailing address); American Medical Diagnostics  
22 Lab, Inc. (mailing address); Best Insurance Service LLC (business address); and  
23 Caring Health Services LLC (business address).

24       89. Unbeknownst to United at the time, United was induced into paying  
25 fees to many of the entities operating out of the mailboxes at the Beverly Hills  
26 Postal Place.

iv. **The Counterclaim Defendants Used This Web of Corporate Entities to Control and Conceal Payments from United.**

3       90. Since at least 2008, United has paid tens of millions of dollars to the  
4 Counterclaim Defendants. While United continues to investigate and discover  
5 additional entities that are part of the Omidi Network, and additional payments  
6 made to Omidi Network entities, United has issued checks to Michael and Julian  
7 Omidi, the Corporate Counterclaim Defendants, and dozens of entities and  
8 individuals which are, upon information and belief, owned, operated, controlled by,  
9 or acted in concert with the Omidis. Following is a table showing the Omidi  
10 Network payees United has uncovered so far:

Payee	No. of Checks	Amount
ALJO MEDICAL INC	3	\$37,437.09
ALMONT AMBULATORY SURGERY CENTER	660	\$8,197,712.24
ANESTHESIA SPECIALIST LLC	6	\$19,947.40
ARBO MEDICAL INC	1	\$1,550.00
ATMA MEDICAL INC	13	\$126,529.66
BAKERSFIELD SURGERY INSTITUTE	2	\$6,232.55
BAKERSFIELD SURGICAL CENTER	5	\$38,100.61
BEVERLY HILLS ANESTHESIA LLC	25	\$121,964.51
BEVERLY HILLS ANESTHESIA LLC /SCOTT C BICKMAN MD	2	\$14,687.30
BEVERLY HILLS ANESTHESIA LLC /YVONNE F SIAS RNA	3	\$6,485.44
BEVERLY HILLS ANESTHESIA LLC/STEVEN L MANDEL MC	3	\$6,549.95
BEVERLY HILLS GASTROENTEROLGY/PEDRAM J ENAYATI MD	36	\$127,073.26
BEVERLY HILLS GASTROENTEROLOGY	20	\$56,314.71
BEVERLY HILLS GASTROENTEROLOGY/ATUL MADAN MD	3	\$11,639.60
BEVERLY HILLS GASTROENTEROLOGY/OMID SHAYE MD	41	\$167,532.95
BEVERLY HILLS LABORATORY LLC	32	\$135,235.29
BEVERLY HILLS SURGERY CENTER LLC	822	\$12,907,890.19
BEVERLY HILLS SURGERY CENTER LLC /GEORGE MEDNIK MD	30	\$88,314.27
BEVERLY HILLS SURGERY CENTER LLC/ DAVAR ARAM MD	2	\$9,932.44
BEVERLY HILLS SURGERY CENTER LLC/KIKI L HURT MD	5	\$15,710.16
BEVERLY HILLS SURGERY LLC	45	\$531,598.78
BEVERLY HILLS SURGERY LLC/ATUL MADAN MD	4	\$11,189.25
BEVERLY HILLS UNTRASOUND LLC / GEORGE MEDNIK MD	4	\$13,893.99
BYCH MEDICAL INC	1	\$1,870.00
CIRO SURGERY CENTER LLC	17	\$120,552.37
CORRECTIVE SURGERY SPECIALISTS	5	\$26,486.38
CYCH MEDICAL INC	1	\$2,370.00

1	CYCH MEDICAL INC/CYNTHIA S CHINN CSW	1	\$3,489.32
2	DECH MEDICAL INC	1	\$1,820.00
3	EAST BAY ASC LLC	5	\$108,829.07
4	ELAL MEDICAL INC	2	\$6,679.90
5	ENDOSCOPY SPECIALISTS LLC	19	\$46,650.07
6	GASTROINTESTINAL MED CTR	2	\$3,680.01
7	GEME ULTRASOUND INC	3	\$11,563.38
8	GEME ULTRASOUND INC/GEORGE MEDNIK MD	1	\$4,452.14
9	GEORGE MEDNIK MD	5	\$40,797.43
10	GETA MEDICAL INC	3	\$10,368.75
11	GETA MEDICAL INC/KEVORK G TASHJIAN MD	3	\$13,423.13
12	GYNECOLOGY SPECIALISTS LLC	2	\$13,113.00
13	GYNECOLOGY SPECIALISTS LLC/ARAM BONNI MD	2	\$7,091.59
14	HEDU MEDICAL INC/HERVE J DUMONT MD	1	\$1,548.93
15	HOKA MEDICAL INC	18	\$83,780.08
16	HOLI MEDICAL INC	1	\$1,567.92
17	HRSC MEDICAL INC	2	\$19,455.24
18	INDEPENDENT MEDICAL SERVICES INC	13	\$89,849.18
19	INDEPENDENT MEDICAL SERVICES INC/CATALIN G MARINESCU MD	5	\$30,799.01
20	IRSC MEDICAL INC/IRA J SCHWALS MD	1	\$4,050.00
21	JAMES I RODRIGUEZ	2	\$9,677.99
22	JODE MEDICAL INC/JOHN R DEBANTO MD	6	\$17,551.64
23	JOOG MEDICAL INC/JOHN OGAI MD	3	\$14,367.76
24	JOSE MEDICAL INC	1	\$2,805.00
25	JOSEPH HOUSHMAND NAIM MD	18	\$139,656.62
26	JOSI MEDICAL INC	1	\$1,576.32
27	JUGE MEDICAL INC/JULIUS WAH GEE DO	4	\$14,082.90
28	JULIAN OMIDI	1	\$4,162.72
1	LABORATORY SPECIALISTS LLC	7	\$20,294.25
2	LAPBAND SPECIALISTS LLC	7	\$62,221.50
3	LAPBAND SPECIALISTS LLC/ATABAK ALLAEI MD	1	\$1,644.00
4	LAPBAND SPECIALISTS LLC/ATUL MADAN MD	35	\$96,845.25
5	LAPBAND SPECIALISTS LLC/GEORGE KEVORK TASHJIAN MD	54	\$195,582.89
6	LAPBAND SPECIALISTS LLC/JAMES A HARTLEROAD MD	3	\$4,932.00
7	LAPBAND SPECIALISTS LLC/JULIUS WAH GEE DO	10	\$20,963.35
8	LAPBAND SPECIALISTS LLC/STEVEN W LUTZKER MD	1	\$3,300.00
9	LEAU MEDICAL INC	2	\$3,459.39
10	LIU, PERRY	3	\$179,119.55
11	MAFL MEDICAL	5	\$13,360.17
12	MICHAEL OMIDI	11	\$44,566.87
13	MISE MEDICAL INC	3	\$7,134.95
14	MODERN INSTITUTE OF PLASTIC SURGERY	76	\$2,458,669.16
15	MODERN INSTITUTE OF PLASTIC SURGERY & ANTI AGING	55	\$1,143,408.87
16	NEW LIFE SURGERY CENTER LLC	14	\$385,589.08

1	ORANGE GROVE SURGERY CENTER LLC	10	\$92,565.27
2	PACIFIC WEST DERMATOLOGY A MED	22	\$51,555.57
3	PACIFIC WEST DERMATOLOGY A MED/ALEXANDER WEISSE ESQ	1	\$1,660.13
4	PACIFIC WEST DERMATOLOGY A MED/JULIAN C OMIDI MD	5	\$11,671.26
5	PACIFIC WEST DERMATOLOGY ATTN LEVI GREEN	1	\$12,995.88
6	PALMDALE AMBULATORY SURGERY CTR	9	\$39,263.82
7	RASH MEDICAL INC	1	\$3,867.50
8	RASH MEDICAL INC/RAMIN R SHAMTOB MD	6	\$29,810.01
9	RECONSTRUCTIVE SURGERY SPECIAL/BRIAN R WEST MD	1	\$1,740.00
10	RECONSTRUCTIVE SURGERY SPECIAL/BURR VON MAUR MD	1	\$10,904.64
11	RECONSTRUCTIVE SURGERY SPECIAL/OLLIE J JACKSON MD	13	\$111,874.73
12	RECONSTRUCTIVE SURGERY SPECIALISTS	13	\$53,124.32
13	RECONSTRUCTIVE SURGERY SPECIALISTS/BRUCE M ASCOUGH MD	2	\$9,239.00
14	ROAZ MEDICAL INC/ROBERT AZIZI MD	1	\$3,225.00
15	SAN DIEGO ANESTHESIA LLC	3	\$13,795.14
16	SAN DIEGO ANESTHESIA LLC / DANIEL S SHIN MD	1	\$1,766.40
17	SAN DIEGO ASC LLC	8	\$70,281.49
18	SAN DIEGO GASTROENTEROLOGY LLC	1	\$1,630.00
19	SAN DIEGO LABORATORY LLC	7	\$31,071.21
20	SEPA MEDICAL INC	3	\$9,004.01
21	SHHI MEDICAL INC	2	\$7,558.40
22	SKIN CANCER & RECONSTRUCTIVE	636	\$3,438,518.41
23	SKIN CANCER & RECONSTRUCTIVE S/GEORGE KEVORK TASHJIAN MD	8	\$94,950.00
24	SKIN CANCER & RECONSTRUCTIVE SURGERY SPECIALISTS	12	\$55,205.89
25	SKIN CANCER & RECONSTRUCTIVE SURGERY SPECIALISTS / JULIAN C OMIDI MD	1	\$2,351.00
26	SKIN CANCER & RECONSTRUCTIVE SURGERY SPECIALISTS/NADIA I KIHICZAK	3	\$11,588.40
27	SKIN CANCER & RECONSTRUCTIVE/ATUL MADAN MD	20	\$198,633.90
28	SKIN CANCER & RECONSTRUCTIVE/GEORGE KEVORK TASHJIAN MD	65	\$634,526.32
29	SKIN CANCER & RECONSTRUCTIVE/NADIA I KIHICZAK	19	\$47,308.89
30	SKIN CANCER & RECONSTRUCTIVE/OLLIE J JACKSON MD	1	\$13,000.00
31	SKIN CANCER & RECONSTRUCTIVE/PEJMAN SAMOUHA MD	30	\$111,408.76
32	SKIN CANCER & RECONSTRUCTIVE/STEVEN W LUTZKER MD	15	\$36,505.80
33	SKIN CANCER & RECONSTRUCTIVE SURGERY	2	\$3,255.00
34	ULTRASOUND SPECIALISTS LLC/GEORGE MEDNIK MD	27	\$122,604.51
35	VALENCIA A S C CENTER LLC	20	\$494,044.70
36	VALENCIA ANESTHESIA LLC	7	\$23,081.36
37	VALENCIA ANESTHESIA LLC / STEVEN L MANDEL MD	1	\$2,308.32
38	VALENCIA GASTROENTEROLOGY LLC	6	\$32,141.78
39	VALENCIA GASTROENTEROLOGY LLC/MARVIN A PERER MD	2	\$3,536.00

1	VALENCIA GASTROENTEROLOGY LLC/ATUL MADAN LD	1	\$1,568.00
2	VALENCIA GASTROENTEROLOGY LLC/MARVIN A PERER MD	1	\$1,559.70
3	VALENCIA GASTROENTROLOGY LLC/MARVIN A PERER MD	5	\$23,385.85
4	VALENCIA LABORATORY LLC	59	\$410,144.17
5	VALENCIA LABORATORY LLC/GEORGE MEDNIK MD	2	\$8,600.00
6	VALENCIA SURGICAL CENTER	4	\$15,325.80
7	VALENCIA ULTRASOUND LLC	9	\$37,054.60
8	VALENCIA ULTRASOUND LLC/GEORGE MEDNIK MD	11	\$48,556.17
9	VALLEY SURGICAL CENTER LLC	154	\$4,826,603.75
10	VIMA MEDICAL INC	1	\$1,785.00
11	WEST HILLS ANESTHESIA LLC	86	\$369,875.31
12	WEST HILLS ANESTHESIA LLC/ANNA STEINER MD	1	\$3,484.57
13	WEST HILLS ANESTHESIA LLC/DANIEL S SHIN MD	2	\$4,167.95
14	WEST HILLS ANESTHESIA LLC/DEDRICK S KON MD	4	\$8,361.89
15	WEST HILLS ANESTHESIA LLC/SEAN SHAHRIAR SHAHANGIAN MD	2	\$9,676.97
16	WEST HILLS ANESTHESIA LLC/STEVEN L MANDEL MD	3	\$8,478.72
17	WEST HILLS ANESTHESIA LLC/YVONNE F SIAS RNA	2	\$6,867.35
18	WEST HILLS GASTROENTEROLOGY LLC	41	\$152,595.51
19	WEST HILLS GASTROENTEROLOGY LLC/MORTON E ALPERT MD	13	\$41,724.13
20	WEST HILLS LABORATORY LLC	60	\$373,589.67
21	WEST HILLS SURGERY LLC	33	\$443,865.62
22	WEST HILLS SURGERY LLC/ATUL MADAN MD	1	\$13,269.00
23	WEST HILLS SURGERY LLC/DENNIS CHAMBI MD	1	\$8,062.50
24	WEST HILLS SURGERY LLC/JULIUS WAH GEE DO	1	\$11,750.00
25	WEST HILLS SURGERY LLC/KEVORK G TASHJIAM MD	3	\$70,637.54
26	WEST HILLS ULTRASOUND LLC	31	\$169,418.11
27	WOODLAKE AMBULATORY SURGERY	47	\$955,450.76
28	<b>Grand Total</b>	<b>3768</b>	<b>\$42,072,212.23</b>

91. This payment table does not include the payments United made to Counterclaim Defendants by electronic transfer, or other payments that United has not yet discovered.

92. Many of these checks were written and deposited in 2012 and 2013, including checks written to Counterclaim Defendants Almont ASC, Beverly Hills Surgery Center (a/k/a Beverly Hills Surgical Center), Ciro Surgery Center, East Bay ASC, IMS, Modern Institute, New Life Surgery Center, Orange Grove Surgery Center, and Valley Surgery Center.

1       93. These checks were deposited into accounts that have been identified  
2 by United.

3           a) For example, United has uncovered more than \$31 million in  
4 check payments to Counterclaim Defendants that have been deposited into accounts  
5 with Wells Fargo Bank, including but not limited to the following accounts:

- 6           i. Account A<sup>1</sup>, which received checks written to, among others,  
7                   Counterclaim Defendants Michael Omidi, Almont ASC,  
8                   Modern Institute, New Life Surgery Center, Palmdale ASC,  
9                   Skin Cancer Surgery Specialists, and Valley Surgical Center;
- 10           ii. Account B, which received checks written to, among others,  
11                   Counterclaim Defendants Almont ASC and Michael Omidi;
- 12           iii. Account C, which received checks written to, among others,  
13                   Counterclaim Defendants Beverly Hills Surgery Center and  
14                   Skin Cancer Surgery Specialists;
- 15           iv. Account D, which received checks written to, among others,  
16                   Counterclaim Defendants Almont ASC, Michael Omidi, and  
17                   Skin Cancer Surgery Specialists;
- 18           v. Account E, which received checks written to, among others,  
19                   Counterclaim Defendants Almont ASC, Michael Omidi, and  
20                   Skin Cancer Surgery Specialists;
- 21           vi. Account F, which received checks written to, among others,  
22                   Counterclaim Defendant Valley Surgical Center;
- 23           vii. Account G, which received checks written to, among  
24                   others, Counterclaim Defendants Almont ASC, Bakersfield

---

27           <sup>1</sup> United has redacted the account numbers associated with the bank accounts listed  
28 herein for confidentiality purposes, and refers to them as "Account A, Account B,"  
etc. United will provide Counterclaim Defendants a list of the referenced accounts  
under separate cover.

Surgery Center, Beverly Hills Surgery Center, and Skin Cancer Surgery Specialists;

viii. Account H, which received checks written to, among others, Counterclaim Defendant Skin Cancer Surgery Specialists;

ix. Account I, which received checks written to, among others, Counterclaim Defendant Woodlake ASC;

x. Account J, which received checks written to Counterclaim Defendant Palmdale ASC;

xi. Account K, which received checks written to Modern Institute:

xii. Account L, which received checks written to, among others, Almont ASC, Beverly Hills Surgery Center, and Skin Cancer Surgery Specialists;

xiii. Account M, which received checks written to Almont ASC;

xiv. Account N, which received checks written to, among others, Counterclaim Defendant IMS;

xv. Account O, which received checks written to, among others, Counterclaim Defendants Almont ASC, Skin Cancer Surgery Specialists, Woodlake ASC, and Skin Cancer Surgery Specialists/Julian Omidi, M.D.;

xvi. Account P, which received checks written to Counterclaim Defendants Almont ASC, Beverly Hills Surgery Center, Michael Omidi, Skin Cancer Surgery Specialists, Woodlake ASC, and Palmdale ASC;

xvii. Account Q, which received checks written to  
Counterclaim Defendant San Diego ASC;

- xviii. Account R, which received checks written to Counterclaim Defendant Valencia Surgery Center;
- xix. Account S, which received checks written to Counterclaim Defendant West Hills Surgery Center;
- xx. Account T, which received checks written to Counterclaim Defendants Modern Institute and New Life Surgery Center; and
- xxi. Account U, which received checks written to Counterclaim Defendant Beverly Hills Surgery Center.

b) As discussed in further detail below, many of these Wells Fargo accounts also received checks written by United to other entities within the Omidi Network, including, for instance, Anesthesia Specialists LLC, Endoscopy Specialists LLC, Gynecology Specialists LLC, Ultrasound Specialists LLC, Pacific West Dermatology, Beverly Hills Anesthesia LLC, Beverly Hills Gastroenterology LLC, Beverly Hills Laboratory LLC, Lapband Specialists LLC, Laboratory Specialists LLC, GETA Medical, Inc., MAFL Medical, Inc., RASH Medical, Inc., and many others.

c) Further, United has uncovered other check payments that were deposited into accounts maintained at 1st Century Bank, Bank of America, Chase Bank, City National Bank, and JP Morgan Chase .

94. As described below, it is evident from these checks that the Omidis and the Counterclaim Defendants regularly disregard established corporate formalities practices in their handling of amounts paid by United, and treat such amounts as though they belonged to an enterprise acting under common direction and control.

1                   **1. Members of the Omidi Network Regularly Endorse**  
2                   **Checks Written to Other Entities or Individuals in the**  
3                   **Omidi Network**

4               95. Many of United's checks to persons and entities in the Omidi Network  
5               have been endorsed by members of the Omidi Network, including Julian and  
6               Michael Omidi, who are not the named payees.

7               96. For example, attached hereto as **Exhibit F** is a sample of the signature  
8               of Julian Omidi on a Top Surgeons corporate document, and a check written by  
9               United to Counterclaim Defendant Beverly Hills Surgical Center that he endorsed.  
10               Upon information and belief, Michael Omidi endorsed checks that United wrote to  
11               entities and individuals in the Omidi Network as well. These checks serve as a mere  
12               sample of the dozens of endorsements made by the Omidis on checks written by  
13               United.

14               97. As reflected on **Exhibit C**, Michael or Julian Omidi endorsed checks  
15               written by United to the following 55 persons or entities:

- 16               a) Almont ASC;
- 17               b) Anesthesia Specialist LLC;
- 18               c) Bakersfield Surgery Institute;
- 19               d) Bakersfield Surgical Center;
- 20               e) Beverly Hills Anesthesia LLC;
- 21               f) Beverly Hills Anesthesia LLC/Scott Bickman, MD;
- 22               g) Beverly Hills Gastroenterology/Atul Madan, MD;
- 23               h) Beverly Hills Laboratory LLC;
- 24               i) Beverly Hills Surgery Center LLC;
- 25               j) Beverly Hills Ultrasound LLC/George Mednik, MD;
- 26               k) Ciro Surgery Center LLC;
- 27               l) Corrective Surgery Specialists;
- 28               m) George Mednik, MD;

- 1 n) Gynecology Specialists LLC/Aram Bonni, MD;
- 2 o) Julian Omidi;
- 3 p) Lapband Specialists LLC;
- 4 q) Lapband Specialists LLC/Atabak Allaei, MD;
- 5 r) Lapband Specialists LLC/Atul Madan, MD;
- 6 s) Lapband Specialists LLC/George Kevork Tashjian, MD;
- 7 t) Lapband Specialists LLC/James Harleroad, MD;
- 8 u) Michael Omidi;
- 9 v) Modern Institute of Plastic Surgery;
- 10 w) Nadia I. Kihiczak, M.D.
- 11 x) New Life Surgery Center, LLC;
- 12 y) Pacific West Dermatology, A Medical Corp.;
- 13 z) Pacific West Dermatology/Julian C. Omidi, MD;
- 14 aa) Reconstructive Surgery Specialists/Brian R. West, MD;
- 15 bb) Reconstructive Surgery Specialists/Ollie J Jackson, MD;
- 16 cc) Reconstructive Surgery Specialists;
- 17 dd) Skin Cancer & Reconstructive;
- 18 ee) Skin Cancer & Reconstructive Surgery Specialists;
- 19 ff) Skin Cancer & Reconstructive/Nadia I Kihiczak;
- 20 gg) Ultrasound Specialists LLC/George Mednik, MD;
- 21 hh) Valencia Anesthesia LLC
- 22 ii) Valencia Anesthesia LLC/Steven L Mandel, MD;
- 23 jj) Valencia Gastroenterology LLC;
- 24 kk) Valencia Gastroenterology LLC/Marvin A Perer MD;
- 25 ll) Valencia Gastroenterology LLC/Atul Madan MD;
- 26 mm) Valencia Laboratory LLC;
- 27 nn) Valencia Laboratory LLC/George Mednik;
- 28 oo) Valencia ASC;

- 1 pp) Valencia Ultrasound LLC;
- 2 qq) Valencia Ultrasound LLC/George Mednik MD;
- 3 rr) Valley Surgical Center LLC;
- 4 ss) West Hills Anesthesia LLC;
- 5 tt) West Hills Anesthesia LLC/Daniel S Shin MD;
- 6 uu) West Hills Anesthesia LLC/Sean Shahriar Shahangian MD;
- 7 vv) West Hills Anesthesia LLC/Steven Mandel MD;
- 8 ww) West Hills Gastroenterology LLC;
- 9 xx) West Hills Gastroenterology LLC/Morton E. Alpert MD;
- 10 yy) West Hills Laboratory LLC;
- 11 zz) West Hills Surgery LLC;
- 12 aaa) West Hills Surgery LLC/Kevork G Tashjian MD;
- 13 bbb) West Hills Ultrasound LLC; and
- 14 ccc) Woodlake Ambulatory Surgery.

15 98. Further, as reflected on **Exhibit D**, Top Surgeons endorsed more than  
16 \$7 million in checks written by United to other Counterclaim Defendants and  
17 corporate entities that are owned, operated, or controlled by the Omidis.

18 a) Top Surgeons Nevada, which was incorporated by Julian Omidi,  
19 has endorsed \$6,725,741.15 in checks written by United to the following entities  
20 and individuals: Michael Omidi, Almont ASC, Beverly Hills Surgery Center,  
21 Palmdale ASC, Skin Cancer & Reconstructive Surgery Specialists, Woodlake ASC,  
22 Reconstructive Surgery Specialists/Ollie J Jackson, M.D., Beverly Hills Surgery  
23 Center/Kiki L Hurt M.D., LLC, Pacific West Dermatology ATTN Levi Green,  
24 Beverly Hills Anesthesia LLC, Skin Cancer & Reconstructive/Nadia I Kihiczak,  
25 Beverly Hills Gastroenterology/Pedream J Enatayi, M.D., and Beverly Hills  
26 Gastroenterology/Omid Avraham Shaye, M.D.

27 b) Top Surgeons, Inc., which was incorporated by Michael Omidi,  
28 has endorsed \$460,095.02 in checks written by United to the following entities and

1 individuals: Almont ASC, Skin Cancer & Reconstructive, Woodlake ASC, Skin  
2 Cancer & Reconstructive Surgery Specialists, Skin Cancer & Reconstructive  
3 Surgery Specialists/Nadia I Kihiczak, Reconstructive Surgery Specialists/Ollie J  
4 Jackson MD, Skin Cancer & Reconstructive Surgery Specialists/Julian C. Omidi  
5 MD, and Skin Cancer & Reconstructive/Nadia I Kihiczak.

6 c) Finally, Top Surgeons, LLC (California), which was registered  
7 by Michael Omidi, has endorsed \$154,367.36 in checks written by United to the  
8 following entities and individuals: Michael Omidi, Almont ASC, Anesthesia  
9 Specialist LLC, Endoscopy Specialists LLC, Gynecology Specialists LLC,  
10 Laboratory Specialists LLC, Pacific West Dermatology/Alexander Weisse Esq.,  
11 Reconstructive Surgery Specialists/Ollie J Jackson MD, Ultrasound Specialists  
12 LLC/George Mednik MD.

13 99. Checks written to Michael Omidi were endorsed by Michael Omidi  
14 himself, but also by Skin Cancer & Reconstructive Surgery Specialists of Beverly  
15 Hills, Skin Cancer & Reconstructive Surgery Specialists of West Hills, Surgery  
16 Center Management LLC, Top Surgeons LLC (California), and Top Surgeons  
17 Nevada.

18 100. This practice of cross-endorsing checks extends to the Counterclaim  
19 Defendant surgery centers as well.

20 a) For instance, United wrote more than \$8.1 million in checks to  
21 Counterclaim Defendant Almont ASC. Of this amount, Almont ASC endorsed  
22 checks totaling only \$832,608.87, while Top Surgeons Nevada endorsed checks  
23 totaling \$3,417,079.95. Additional endorsees include, Bakersfield Surgery Institute  
24 (\$1,118,706.33), Top Surgeons, Inc. (\$291,340.16), Top Surgeons LLC (California)  
25 (\$66,400.08), Surgery Center Management, LLC (\$104,381.02), Skin Cancer &  
26 Reconstructive Surgery Specialists of Beverly Hills (\$59,000.00), and Skin Cancer  
27 & Reconstructive Surgery Specialists of West Hills (\$8,053.16).

b) By further example, United wrote more than \$3.6 million in checks to Counterclaim Defendant Modern Institute. Of these, however, Modern Institute endorsed checks totaling only \$424,908.87. However, an entity called Medical Payment Processing LLC, which was organized by Omidi associates Alexander Weisse, Maureen Jaroscak, and Shawn Pezeshk and is, upon information and belief, operated and controlled by the Omidis, endorsed \$1,034,777.10 of these checks, and Surgery Center Management endorsed \$1,680,504.71—more than one-third of the amounts United paid to Modern Institute. The remaining checks were signed by the Omidis and other unknown individuals or entities.

c) Additionally, United wrote more than \$13.0 million in checks to Beverly Hills Surgery Center, LLC. Of these, Beverly Hills Surgery Center LLC endorsed checks totaling \$7,443,536.21, while Top Surgeons LLC Nevada endorsed checks totaling \$2,390,395.11. Almont ASC endorsed checks totaling \$139,498.24; Bakersfield Surgery Institute, Inc. endorsed checks totaling \$770,329.93; and Top Surgeons LLC/Beverly Hills Surgery Center LLC endorsed \$37,671.69.

d) Finally, Counterclaim Defendants obtained authorizations from United Members to deposit insurance checks “for services provided by PROVIDER(s) and/or FACILITY(s) and their affiliates” into accounts maintained by Surgery Center Management, which has endorsed \$6,519954.88 in checks written by United to the following 37 persons or entities:

- i. Almont ASC;
- ii. Anesthesia Specialists LLC;
- iii. ARBO Medical, Inc.;
- iv. Beverly Hills Surgery LLC;
- v. Corrective Surgery Specialists;
- vi. Endoscopy Specialists LLC;
- vii. GETA Medical, Inc.;

- viii. Laboratory Specialists LLC;
- ix. Lapband Specialists LLC;
- x. Lapband Specialists LLC/Atul Madan MD;
- xi. Lapband Specialists LLC/George Kevork Tashjian MD;
- xii. Lapband Specialists LLC/James Hartleroad MD;
- xiii. Lapband Specialists LLC/Julius Wah Gee DO;
- xiv. MAFL Medical;
- xv. Michael Omidi;
- xvi. Modern Institute of Plastic Surgery;
- xvii. Modern Institute of Plastic Surgery & Anti-Aging;
- xviii. New Life Surgery Center LLC;
- xix. Palmdale ASC;
- xx. RASH Medical, Inc./Ramin R. Shamtoob MD;
- xxi. Reconstructive Surgery Specialists/Burr Von Maur MD;
- xxii. Reconstructive Surgery Specialists/Ollie J Jackson MD;
- xxiii. Skin Cancer & Reconstructive/Ollie J Jackson MD;
- xxiv. Ultrasound Specialists LLC/George Mednik MD;
- xxv. Valley Surgical Center LLC;
- xxvi. West Hills Anesthesia LLC;
- xxvii. West Hills Anesthesia LLC/Anna Steiner MD;
- xxviii. West Hills Anesthesia LLC/Daniel S Shin MD;
- xxix. West Hills Anesthesia LLC/Dedrick S Kon MD;
- xxx. West Hills Anesthesia LLC/Steven L Mandel MD;
- xxxi. West Hills Gastroenterology LLC;

- xxxii. West Hills Gastroenterology LLC/Morton E Alpert MD;
- xxxiii. West Hills Laboratory LLC;
- xxxiv. West Hills Surgery LLC;
- xxxv. West Hills Surgery LLC/Atul Madan MD;
- xxxvi. West Hills Surgery LLC/Julius Wah Gee DO; and
- xxxvii. West Hills Ultrasound LLC.

8        101. This pattern of disregarding accepted corporate practices and  
9        endorsing checks written to other individuals or entities within the Omidi Network  
10        is not limited to the examples above. It is pervasive throughout the Omidi  
11        Network, and applies to many if not all of the payees who have received checks  
12        from United.

## 2. Payments to the Counterclaim Defendants Were Routinely Commingled With Other Omidi-Network Entities

16        102. Additionally, Counterclaim Defendants routinely and without regard to  
17 accepted corporate formalities commingled United's funds between various entities  
18 and treated such amounts as though they belonged to an enterprise acting under  
19 common control and direction.

103. United's checks have been deposited into dozens of bank accounts  
with at least six different financial institutions. In many instances, these accounts  
received checks written to a multitude of different payees.

23                   a)     For example, as reflected on **Exhibit E**, checks totaling  
24     \$6,570,315.63 written by United to the following 37 entities and individuals were  
25     all deposited into a single bank account, Account A, maintained at Wells Fargo  
26     Bank:

- i. Almont ASC;
- ii. Anesthesia Specialist LLC;

- iii. ARBO Medical, Inc.;
- iv. Beverly Hills Surgery LLC;
- v. Corrective Surgery Specialists;
- vi. Endoscopy Specialists LLC;
- vii. GETA Medical, Inc.;
- viii. Laboratory Specialists LLC;
- ix. Lapband Specialists LLC;
- x. Lapband Specialists LLC/Atul Madan MD;
- xi. Lapband Specialists LLC/Julius Wah Gee DO;
- xii. Lapband Specialists LLC/Kevork G Tashjian MD;
- xiii. Lapband Specialists LLC/James A Hartleroad MD;
- xiv. MAFL Medical;
- xv. Michael Omidi;
- xvi. Modern Institute of Plastic Surgery;
- xvii. Modern Institute of Plastic Surgery & Anti Aging;
- xviii. New Life Surgery Center LLC;
- xix. Palmdale ASC;
- xx. RASH Medical Inc./Ramin R Shamtob MD;
- xxi. Reconstructive Surgery Specialists/Ollie J Jackson MD;
- xxii. Reconstructive Surgery Specialists/Burr von Maur MD;
- xxiii. Skin Cancer & Reconstructive Specialists/Ollie J Jackson MD;
- xxiv. Ultrasound Specialists LLC/George Mednik MD;
- xxv. Valley Surgical Center LLC;
- xxvi. West Hills Anesthesia LLC;
- xxvii. West Hills Anesthesia LLC/Daniel S Shin MD;

- xxviii. West Hills Anesthesia LLC/Dedrick S Kon MD;
- xxix. West Hills Anesthesia LLC/Anna Steiner MD;
- xxx. West Hills Anesthesia LLC/Steven Mandel MD;
- xxxi. West Hills Gastroenterology LLC;
- xxxii. West Hills Gastroenterology LLC/Morton E Alpert MD;
- xxxiii. West Hills Laboratory LLC;
- xxxiv. West Hills Surgery LLC;
- xxxv. West Hills Surgery LLC/Atul Madan MD;
- xxxvi. West Hills Surgery LLC/Julius Wah Gee DO;
- xxxvii. West Hills Ultrasound LLC;

ii. Meanwhile, \$8,038,978.89 in checks written by United to the following 13 entities and individuals were deposited into Account C: Beverly Hills Anesthesia LLC; Beverly Hills Anesthesia LLC/Scott C Bickman MD; Beverly Hills Anesthesia LLC/Yvonne F Sias RNA; Beverly Hills Anesthesia LLC/Steven L Mandel MC; Beverly Hills Gastroenterology/Atul Madan MD; Beverly Hills Laboratory LLC; Beverly Hills Surgery Center LLC; Beverly Hills Surgery Center LLC/George Mednik MD; Beverly Hills Surgery LLC; LapBand Specialists LLC/Julius Wah Gee DO; Skin Cancer & Reconstructive; Skin Cancer & Reconstructive/George Kevork Tashjian MD; Skin Cancer & Reconstructive/Pejman Samouha MD.

iii. Finally, \$6,830,113.86 in checks written by United to the following 15 entities and individuals were deposited into Account P: Almont ASC, Beverly Hills Anesthesia LLC, Beverly Hills Gastroenterology/Pedream J Enayati MD, Beverly Hills Gastroenterology/Omid Shaye MD, Beverly Hills Surgery Center LLC, Beverly Hills Surgery Center LLC/George Mednik MD, Beverly Hills Surgery Center/Kiki L Hurt MD, Endoscopy Specialists LLC, Michael Omidi, Pacific West Dermatology ATTN Levi Green, Palmdale ASC, Reconstructive Surgery

1 Specialists/Ollie J Jackson MD, Skin Cancer & Reconstructive, Skin Cancer &  
2 Reconstructive/Nadia I Kihiczak, and Woodlake ASC.  
3

4 104. This pattern of disregarding accepted corporate practices and  
5 depositing checks written to other individuals or entities into the accounts of  
6 different individuals or entities as though they are under common ownership and  
7 control is not limited to the examples above. It is pervasive throughout the Omidi  
8 Network, and applies to many if not all of the checks from United.  
9

10 **v. The Omidis and Their Company, Top Surgeons, Control the**  
11 **Day to Day Operations of the Counterclaim Defendants and**  
12 **Persons and Entities in the Omidi Network.**

13 105. The Omidis and their company, Top Surgeons, control the day-to-day  
14 operations of the Counterclaim Defendants and persons and Entities in the Omidi  
15 Network

16 106. As is further detailed below, United is informed and believes that the  
17 Omidis, Top Surgeons, associated individuals, and related corporate entities, own  
18 and operate clinics and health care providers in violation of California's statutes  
19 precluding the corporate practice of medicine. Privately enforced through  
20 California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, the  
21 corporate practice of medicine doctrine prohibits unlicensed physicians from  
22 practicing medicine and unlicensed physicians from owning any portion of a  
23 medical practice. California law also permits only a limited number of corporate  
24 forms under which a licensed physician can practice, and further proscribes  
25 incentive payments to physicians. This scheme, where the Omidis, Top Surgeons,  
and associated individuals and entities own and operate surgical centers, violated  
California's laws prohibiting the corporate practice of medicine.

26 107. The Omidis and others under their control jointly manage, administer,  
27 direct, or control many of the medical decisions made at Counterclaim Defendant  
28

1 surgical centers. They also exercise control over the medical professionals  
2 affiliated with the Corporate Counterclaim Defendants.

3 a) Despite the fact that Julian Omidi lost his medical license in  
4 June 2009, Julian and Michael Omidi recruited physicians and surgeons to perform  
5 professional medical services at their network of clinics and surgery centers, and  
6 negotiated the terms of their contracts. The contracts signed by these physicians  
7 provide that Top Surgeons, Inc. (usually referred to in the contracts as the “Medical  
8 Group”), as counterparty to the agreement, “owns and operates a medical practice  
9 with various locations in California,” including the locations of many of the  
10 Counterclaim Defendant surgical centers. The signature block on these contracts  
11 reflect that Julian or Michael Omidi is the signing representative for Top Surgeons,  
12 Inc.

13 b) Dr. Ishan Najib Shamaan, a surgeon who performed medical  
14 services for the Omidis at the Counterclaim Defendant surgical centers and who did  
15 not join the Omidi Network until after Julian Omidi lost his medical license,  
16 testified under oath that the Omidis mandate that physicians shall not disclose to  
17 patients all known risks associated with surgical procedures such as the gastric Lap  
18 Band, and that the Omidis do not provide all necessary or sanitary equipment, tools,  
19 or surgical instruments for physician use during many types of procedures at  
20 Counterclaim Defendant surgical centers.

21 c) This same physician testified that Julian Omidi instructed him to  
22 sign approximately 600 “preprinted” form letters seeking insurer approval for  
23 surgery. These letters were then sent to health insurers to demonstrate that surgery  
24 was medically necessary. Dr. Shamaan further testified that (1) he had not actually  
25 examined these patients before signing these approval letters; (2) the portion of the  
26 letter that supposedly described the patient’s particular medical condition was  
27 actually pre-printed boilerplate; and (3) he recognized this practice was “fraud.”

d) Counterclaim Defendants asked patients to sign attestations acknowledging that the surgery centers are “fully accredited multispecialty surgery center[s]” of which Dr. Michael Omidi is a part owner, and that “Dr. Michael Omidi will be receiving compensation for the procedures performed.” These attestations also specifically reference 1-800-GET-THIN and Top Surgeons.

e) Michael Omidi is identified on an organizational chart as the head of Counterclaim Defendant IMS and its associated ambulatory surgical centers.

f) United is informed and believes that the Omidis own, operate, and control a centralized repository or office that houses Defendants' medical and patient records, a centralized patient-scheduling organization, and a centralized finance and accounting organization.

i. Under this centralized structure, which is tightly controlled by the Omidis, physicians do not have direct access or control over their patients' medical records.

ii. Under this structure, physicians' schedules are controlled by either Julian or Michael Omidi or Maria Abaca, Counterclaim Defendants' bariatric program coordinator.

iii. Finally, this centralized organization is responsible for physician payment and reimbursement and patient billing, over which the servicing physicians have no involvement or control. The patient billing organization is administered, in part, by Counterclaim Defendants' representatives Araminta Salazar and Yesenia F., who performed billing services for Counterclaim Defendants at relevant times alleged herein. Salazar has testified in other matters that, as part of her duties, she submits medical records and claims "in every case," and that she has performed these same billing services and used the same process for "tens of thousands" of claims and appeals with respect to Counterclaim Defendants, including IMS, Modern Institute, Valley Surgical Center, and Orange

1 Grove Surgical Center. As part of her duties, Yesenia F. provided to United  
2 accreditation confirmation for certain Counterclaim Defendants, including Modern  
3 Institute and New Life Surgery Center.

4 108. Further, the physicians contracting with Top Surgeons and practicing  
5 at the Counterclaim Defendant surgery centers are promised bonuses, on a per-  
6 procedure basis, for performing a certain number of procedures, in violation of  
7 California's ban on incentivization of patient referrals.

8 a) For example, Dr. Marvin Perer, M.D., who performed  
9 professional medical services at a number of the Counterclaim Defendant surgery  
10 centers, executed an Independent Contractor Agreement for Part-Time  
11 Gastroenterologist Services with Top Surgeons, Inc. on July 27, 2009. Julian  
12 Omidi, M.D., CEO, is named as Top Surgeons' representative for the agreement.  
13 The contract states that Dr. Perer "shall provide various professional medical  
14 services as an independent contractor Gastroenterologist for the Medical Group,"  
15 and that he "shall" perform these services "on an as needed basis at Medical  
16 Group's various locations, including, but not limited to, Medical Group's Beverly  
17 Hills, West Hills, Valencia, Palmdale, Bakersfield, Apple Valley, Covina, Long  
18 Beach, San Bernardino, Orange County and San Diego locations." Exhibit B to  
19 the Agreement sets forth Dr. Perer's compensation. It states that three to four  
20 patients will be scheduled for EGD procedures per hour. In addition to an annual  
21 salary, the contract provides that Dr. Perer will receive a bonus of "an additional  
22 \$110" for each EGD over 60 that he performs in a week, and an additional \$110 per  
23 EGD to cover for another physician. As noted below, the amount that  
24 Counterclaim Defendants charged patients for an EGD procedure greatly exceeded  
25 these amounts.

26 b) Likewise, Dr. Ihsan Najib Shamaan, M.D., executed a similar  
27 contract, titled Independent Contractor Agreement for General Surgery Services,  
28 Director of Surgery Center, Direct of Center of Excellence agreement, with Top

Surgeons, Inc. on August 15, 2009. Like Dr. Perer's contract, Julian Omidi, M.D., CEO, is named as Top Surgeons' representative for the agreement. The contract states that Dr. Shamaan "shall provide various professional and medical services as an independent contractor **GENERAL SURGEON** for the Medical Group," and that he shall perform the services "on an as needed basis at Medical Group's Facilities, including, but not limited to, Medical Group's Beverly Hills, West Hills, Valencia, Palmdale, Bakersfield, Apple Valley, Covina, Long Beach, San Bernardino, Orange County, and San Diego locations." The contract further provided that Dr. Shamaan shall be paid an annual salary, plus bonuses of (1) \$500 per Gastric banding case after the 16th procedure for the month; (2) \$500 per laparoscopic cholecystectomy; (3) \$250 for approved revisions; and (4) \$350 for Gastric banding cases performed in hospital.

16       109. Further, United is informed and believes that after Julian Omidi's  
17 medical license was revoked in June 2009, he continued to hire physicians and  
18 surgeons, direct medical decision making, and own, operate, and profit from Top  
19 Surgeons and its related entities.

110. United is informed and believes that, in violation of California's  
prohibition on the practice of medicine by unlicensed individuals, non-physicians,  
including Robert Macatangay, who is known around the Omidi Network as "Dr.  
Bobby" but is in fact a lay person and not a licensed medical professional, directed,  
controlled, and profited from the medical decision making and care given to United  
Members who received medical services from the Counterclaim Defendant surgery  
centers.

27        111. Further, United is informed and believes that Julian Omidi and these  
28 other non-physicians were aided and abetted in their corporate practice of medicine

1 by Counterclaim Defendant Michael Omidi, who represents himself to the public as  
2 the owner of the Counterclaim Defendant surgical centers.

3       112. Finally, the corporate structure of the Omidi Network, including Top  
4 Surgeons, wherein unlicensed physicians or corporate entities, including Top  
5 Surgeons, violates California's rules regarding the corporate practice of medicine.

6       113. Upon information and belief, the Omidis have directed or controlled  
7 Counterclaim Defendant 1-800-GET-THIN and its representative Robert  
8 Silverman, who at times relevant hereto worked closely with and served as counsel  
9 for the Omidis and their enterprise. In turn, United is informed and believes that  
10 Robert Silverman served as an executive at 1-800-GET-THIN and operated 1-800-  
11 GET-THIN at the direction of and under the control of the Omidis.

12       114. United is informed and believes that each Counterclaim Defendant was  
13 the agent, servant, employee, partner and/or joint venture of each of the other  
14 Counterclaim Defendants and that the acts of each Counterclaim Defendant were  
15 within the scope of such agency, service, and/or employment. In doing the acts and  
16 omissions alleged herein, each Counterclaim Defendant acted with the knowledge,  
17 permission, and/or consent of every other Counterclaim Defendant, and each  
18 Counterclaim Defendant aided, abetted, and/or conspired with the other  
19 Counterclaim Defendants in the acts and omissions alleged herein. As additional  
20 evidence of this common control, an entity claiming to be called "ERISA  
21 Document Request" sent letters to the employers listed as defendants in the related  
22 action captioned *Almont Ambulatory Surgery Center et. al. v. UnitedHealth Group,*  
23 *Inc.*, (CV-14-2139 (MWF/VBK) demanding documents under ERISA Section  
24 104(b) that applied to the exemplar patients' claims listed in Exhibit A of the  
25 complaint in that matter. The requests included some assignments that purported to  
26 be executed in favor of some of the claimants in that matter (and Counterclaim  
27 Defendants in this matter). These requests demanded that all responses be sent to  
28 the 269 S. Beverly Drive, Suite 353 address referenced above. Upon information

1 and belief, "ERISA Document Request" is a fictitious name acting under the  
2 control of the Omidi Network (including Julian and Michael Omidi specifically)  
3 and acting on behalf of various members of the Omidi Network, and Counterclaim  
4 Defendants.

5 115. United is further informed and believes that the Counterclaim  
6 Defendants and Does 1 through 200, inclusive, are the successor, predecessor,  
7 affiliate, and/or alter egos of the Omidis, and are and have been controlled by the  
8 Omidis at all relevant times alleged herein. United is further informed and believes  
9 that the Omidis, and each of them, administrated, governed, controlled, managed  
10 and directed all of the necessary functions, activities and operations of the above-  
11 referenced alter-ego Counterclaim Defendants, including the medical, surgical, and  
12 nursing services provided to United members.

13 116. United is further informed and believes that there is a unity of interest  
14 between and among the Omidis on the one hand, and the Counterclaim Defendants  
15 on the other hand. United is further informed and believes that in light of the unity  
16 of interest and control, if the Omidis are not held liable for the debts and obligations  
17 of the other Counterclaim Defendants, a fraud and injustice would result upon  
18 United. Specifically, the Omidi Network's shifting corporate structure contributed  
19 to eluding from detection by United Counterclaim Defendants' fraudulent scheme  
20 and raises the likelihood that a recovery against one person or entity in the Omidi  
21 Network would not compensate United or the United Plans for their financial  
22 injury. United cannot therefore secure a just result absent the Omidis' participation  
23 in this action. Accordingly, United seeks judgment against each of the above-  
24 named Counterclaim Defendants.

1                   C. **Counterclaim Defendants Misrepresented Charges By Failing To**  
2                   **Disclose Their Routine Waiver of Member Responsibility**  
3                   **Amounts, and Performed Unnecessary Services, Submitted**  
4                   **Fraudulent Bills, and/or Inflated Charges to Secure**  
5                   **Reimbursement for Uncovered Services**

6                   117. The typical design of the health benefit plans insured or administered  
7                   by United provides significant financial incentives for members to use lower cost  
8                   in-network providers, instead of higher cost out-of-network providers. These health  
9                   plans typically have lower Member Responsibility Amounts for services received  
10                  from in-network providers. For example, a common design of the health plan  
11                  insured or administered by United specifies 30% or 40% coinsurance for out-of-  
12                  network services, and either 10% or 20% coinsurance for in-network services.  
13                  Annual deductibles may also be higher for out-of-network services.

14                  118. Members of health plans insured or administered by United are also  
15                  protected from “balance billing” when they utilize in-network providers, who have  
16                  agreed to accept as full payment the combination of the contracted rates paid under  
17                  the health plans, together with the patient’s in-network Member Responsibility  
18                  Amounts. In contrast, out-of-network providers are generally free to balance bill  
19                  patients for any difference between their actual charges and the amounts paid under  
the plan.

20                  119. To induce United members to forgo the significant cost-saving benefits  
21                  of using in-network providers, the Counterclaim Defendants, who were not part of  
22                  United’s provider network, routinely agreed to waive all Member Responsibility  
23                  Amounts, including copayments, co-insurance, and deductibles, in return for an  
24                  agreement from the Member to accept services from Counterclaim Defendants.  
25                  Counterclaim Defendants routinely promised United members that they would not  
26                  be responsible for any out-of-pocket costs and that the Counterclaim Defendants  
27                  would accept as full payment whatever amounts insurance would pay. In this way,  
28                  Defendants eliminated the financial incentives for United members to use in-

1 network providers by assuring United members that the actual cost to them for  
2 Counterclaim Defendants' out-of-network services would be zero. They also  
3 induced participants to receive services from Counterclaim Defendants when the  
4 participant otherwise would have simply forgone the treatment (even at less  
5 expensive in-network providers), found another form of weight loss treatment, or,  
6 alternatively, sought treatment from an in-network provider that would (but for the  
7 waiver of the Member Responsibility Amounts) have been less expensive for both  
8 the group health plan and the participant.

9 120. Consistent with their promises to United members to waive Member  
10 Responsibility Amounts, the Counterclaim Defendants routinely failed to collect  
11 such amounts from several thousand United members.

12 121. The routine waiver by the Counterclaim Defendants of Member  
13 Responsibility Amounts resulted in an intentional misrepresentation of the amounts  
14 billed on the claim forms submitted by Defendants to United. As described above,  
15 the claim forms represent the amount Counterclaim Defendants purport to have  
16 charged the United members for their services. When Counterclaim Defendants  
17 routinely waived Member Responsibility Amounts, they effectively reduced the  
18 amount that they were charging the members for their services by the amount of the  
19 waived member responsibility. Counterclaim Defendants did not reflect that  
20 reduction in the amount billed on their claim forms to United, however, and further  
21 failed to disclose to United its routine waiver of Member Responsibility Amounts.

22 122. United is informed and believes that the Counterclaim Defendants  
23 were willing to waive Member Responsibility Amounts because they both desired  
24 to obtain new patients and because they intended to submit inflated billed charge  
25 amounts to United that greatly exceeded both what the Counterclaim Defendants  
26 would charge to cash paying patients, and what the majority of providers in the  
27 relevant geographical region would charge for the same services. When, after  
28 Counterclaim Defendants failed to obtain reimbursement from United, they

1 retracted their earlier agreements with and representations to United Members and  
2 billed them for their services, in many cases, years after the procedures were  
3 allegedly performed. United Members have been shocked to discover the amounts  
4 charged.

5 123. In addition, most of the relevant health benefit plans provide that no  
6 benefit is due under the plan if the United Member is not legally obligated to pay  
7 such sums (such as when a provider agrees to accept whatever payment the  
8 insurance company will pay as full payment for all services), or if the provider  
9 waives Member Responsibility Amounts. Counterclaim Defendants intentionally  
10 failed to disclose their routine waiver of these amounts so that they could  
11 circumvent these restrictions on benefits and obtain payment for claims based on  
12 purported assignments from the members.

13 124. United is further informed and believes that, as is customary in the  
14 healthcare industry, Counterclaim Defendants had knowledge of a prospective  
15 patient's insurance coverage and benefits prior to providing medical services.

16 125. Further, United has discovered multiple instances where Counterclaim  
17 Defendants performed unnecessary services, submitted false bills, inflated CPT  
18 codes to charge higher amounts, and submitted records with incorrect BMI  
19 calculations, to secure reimbursement from United, or to evade the limitations on  
20 coverage for bariatric services that are imposed by a number of the United Plans  
21 and of which they had received notice prior to the delivery of services through  
22 communications with United.

23 126. Counterclaim Defendants have carried out this fraud for years by using  
24 the vast Omidi Network to disguise the true identities of its billing providers by  
25 using generic "surgery center" or "provider" on stationery, medical records,  
26 correspondence, and assignments of benefits, billing under various and shifting Tax  
27 Identification Numbers and National Provider Identification numbers, and  
28

1 establishing numerous sham entities, to conceal the conduct underlying this  
2 fraudulent scheme and to induce United to pay fraudulent claims as late as 2013.  
3

4       127. The following patients, and the specific factual allegations related  
5 thereto, serve as examples of Counterclaim Defendants' routine practice of  
6 promising to waive Member Responsibility Amounts and accept as full payment  
7 what a patient's insurance company would pay. In addition, these examples reflect  
8 instances where Counterclaim Defendants performed unnecessary services,  
9 submitted false bills and inflated charges, and submitted records with incorrect BMI  
10 calculations in order to secure reimbursement from United. These examples are  
11 representative of the routine, systematic, widespread, and ongoing scheme to  
12 defraud United and the health plans it administered.

13       i. **Counterclaim Defendants Routinely Waived Patient**  
14       **Responsibility Amounts and Engaged in Other Improper**  
15       **Practices.**

16       1. **United Member 8**<sup>1</sup>

17       128. United Member 8 was covered by an employer sponsored health  
18 benefit plan for which United served as a claims administrator. The terms of this  
19 health benefit plan state: "In the event that a Non-Network provider waives  
20 Copayments (and/or the Annual Deductible) for a particular health service, no  
21 Benefits are provided for the health service for which the Copayments (and/or  
22 Annual Deductible) are waived."

23       129. In or around XX, 2010,<sup>2</sup> United Member 8 called the 1-800-GET-  
24 THIN telephone line after seeing the billboards and other advertisements in  
25

---

26       <sup>1</sup> Due to privacy concerns, United has removed all private health information for  
27 patients referenced herein and will refer to patients as United Member 1, United  
28 Member 2, *etc.*

2       <sup>2</sup> All dates of service have been redacted pursuant to HIPAA and will be provided  
to Counsel for Counterclaim Defendants.

1 Southern California. The 1-800-GET-THIN operator took her insurance  
2 information over the phone, and purported to verify her insurance coverage.  
3

4 130. Counterclaim Defendants' records reflect that a representative from  
5 "Ambulatory Surgical Center" at the hub of the Omidi Network, 9001 Wilshire  
6 Blvd., Suite 106, Beverly Hills, CA, contacted United on XX, 2010 to verify United  
7 Member 8's benefits. The Omidi representative was told that United Member 8 did  
8 not have coverage for bariatric surgery, regardless of "medical necessity."  
9 Consistent with the computer generated questionnaire that the Omidi representative  
10 was, upon information and belief, required to follow when calling United to inquire  
11 about United Member 8's insurance benefits and which is attached hereto as  
12 **Exhibit G**, the Omidi representative then asked, "Are there out of network benefits  
13 for other procedures such as Endoscopy (CPT Code: 43239?)" and "Do you pay the  
14 usual & customary fees of the provider?" Per the questionnaire, the Omidi  
15 representative established that United Member 8 had no daily maximum on her  
16 policy, that no preauthorization was required for EGD procedures or  
17 polysomnography (sleep study), the deductible for out of network benefits was  
18 \$350, and the plan paid 60% of out-of-network benefits.

19 131. This is consistent with the terms of United Member 8's plan, which  
20 specifically excludes from coverage "surgical treatment of obesity."

21 132. Within the next two days, the Omidi representative contacted United  
22 Member 8 and told her that she was covered for the Lap Band and that costs for the  
23 entire procedure, including pre-operative testing, would be covered by insurance  
24 and would not cost her anything out of pocket. The Omidi representative then  
25 invited United Member 8 to attend a "seminar" for Lap Band candidates at one of  
26 the Omidi surgery centers, in order to learn more about the procedure and fill out  
27 paperwork.

28 133. At no time did any Counterclaim Defendant, or any of their  
representatives, ever tell United Member 8 that she did not have coverage for Lap

1 Band surgery. Instead, the Counterclaim Defendants led her to believe that the  
2 procedures she was undergoing were necessary in order to clear her for the Lap  
3 Band surgery.

4 134. United Member 8 attended the seminar and completed a series of  
5 forms.

6 a) With respect to a “Sleep Study” form, United Member 8 did not  
7 indicate that she had any symptoms which would necessitate a sleep study,  
8 including snoring, sleep apnea, difficulty sleeping, or difficulty breathing, because  
9 she was not having any issues with sleep.

10 b) Additionally, United Member 8 had given birth just 6-8 weeks  
11 before and this was not noted as an issue by the Counterclaim Defendants on any of  
12 the medical forms.

13 c) Further, United Member 8 was asked to sign a series of generic  
14 forms, including a generic Assignment of Rights and Benefits form assigning all  
15 insurance rights and benefits to the unspecified “PROVIDER(s) and/or  
16 FACILITY(s),” a generic “Authorization” form authorizing Surgery Center  
17 Management to deposit payments for services provided by the unspecified  
18 “PROVIDER(s) and/or FACILITY(s) and their affiliates,” and a blank “Patient  
19 Initiated Complaint Form,” which reads:

20 I filed the attached claim form with the \_\_\_\_\_ (Insurance Company).  
21 To date, it has not been paid or denied. Benefits were assigned to  
22 \_\_\_\_\_ and, as of today’s date, payment has not been received. I  
23 am responsible for payment of this bill. Please accept this letter as a  
24 formal written complaint against the \_\_\_\_\_ (Insurance Company).  
Sincerely,  
[United Member 8]

25 At the time United Member 8 signed this complaint form, she had not yet  
26 undergone any medical services by Counterclaim Defendants.

27 135. Counterclaim Defendants scheduled United Member 8 for a sleep  
28 study and an EGD.

1       136. United Member 8 arrived for her sleep study on Monday, XX, 2010 as  
2 scheduled, but the building was locked and no one appeared to be at the location.  
3 United Member 8 called the phone number on the door but, after several attempts,  
4 no one answered. United Member 8 returned home.

5       137. On XX, 2010, United Member 8 reported to Counterclaim Defendant  
6 Valencia Surgery Center for her EGD.

7       138. Specifically, the EGD (also known as an Upper GI Endoscopy or  
8 Esophagogastroduodenoscopy) is a short outpatient procedure that Counterclaim  
9 Defendant surgical centers commonly bill United for. The National Institutes of  
10 Health (“NIH”) describes an EGD as a test “to examine the lining of the esophagus  
11 (the tube that connects your throat to your stomach), stomach, and first part of the  
12 small intestine. It is done with a small camera (flexible endoscope) that is inserted  
13 down the throat.” <http://www.nlm.nih.gov/medlineplus/ency/article/003888.htm>.  
14 NIH states that the patient can usually expect to receive a sedative and a painkiller,  
15 a local anesthetic sprayed into the mouth to prevent coughing or gagging when the  
16 endoscope is inserted, and an IV to administer medicine during the procedure.  
17 After the sedatives have taken effect, the endoscope is inserted through the  
18 esophagus to the stomach and duodenum. The doctor examines the lining of the  
19 esophagus, stomach, and upper duodenum, and may take a biopsy through the  
20 endoscope. Additional treatments, such as stretching or widening a narrow area of  
21 the esophagus, may also be done when indicated.

22       139. A pre-printed form in her chart indicates that United Member 8  
23 obtained “Medical Clearance by Internist Dr. Nathan [Thusha].” The two internists  
24 whose names had been pre-printed on the form were crossed out and Dr. Nathan’s  
25 name was handwritten in.

26       140. United Member 8 was placed under anesthesia at 7:43 a.m. The  
27 operative note and anesthesia record do not note any complications. United  
28

1 Member 8 was diagnosed with a hiatal hernia. Additionally, the operative note  
2 shows that a punch biopsy was taken to be sent to pathology to check for H. pylori.  
3

4 141. The EGD was performed by Dr. Perer, who receives a \$110 bonus for  
5 each EGD procedure, above 60, performed each week, as well as a \$110 bonus for  
6 any EGD he covers for another physician. Consistent with Dr. Perer's contract, he  
7 was scheduled to perform 19 gastrointestinal surgeries in the six hours between 7  
8 a.m. and 1 p.m. on the date of United Member 8's EGD procedure. United Member  
9 8's surgery was scheduled to last approximately 15 minutes, and medical records  
10 reflect that she was taken into the operating room at 7:50 a.m. and removed from  
11 the operating room at 8:00 a.m.

12 142. After United Member 8 awoke from anesthesia, she was directed to sit  
13 in a chair in the hallway, and a nurse came to check on her. United Member 8  
14 complained that her throat hurt badly, but the nurse told her it was normal and that  
15 she should drink hot tea. United Member 8 was then sent home. That weekend,  
16 United Member 8 reported to the emergency room where she was diagnosed with a  
17 perforated esophagus and a significant secondary infection as a result of her EGD,  
18 which required surgical debridement twice. Ultimately, United Member 8 required  
19 a feeding tube for approximately six weeks.

20 143. In the interim, United Member 8 received various calls from the  
21 Counterclaim Defendants to reschedule her sleep study, claiming she was a "no  
22 show." She contested the allegation that she failed to appear as scheduled, and  
23 declined to reschedule. Additionally, agents from the Omidi network attempted to  
24 schedule United Member 8 for a vaginal ultrasound with Dr. Aram Bonni, but she  
25 declined that service as well. On or around XX, 2010, United Member 8  
26 communicated that she was no longer interested in proceeding with bariatric  
27 surgery with the Omidi Network.  
28

1       144. Consistent with their ongoing scheme to defraud United, Counterclaim  
2 Defendants submitted false and fraudulent claims to United for United Member 8's  
3 services.

4       145. First, United was induced to pay thousands of dollars toward United  
5 Member 8's XX, 2010 EGD procedure. Unbeknownst to United, Counterclaim  
6 Defendants had not only lied to United Member 8 by telling her she had coverage  
7 for the Lap Band surgery and needed to undergo the EGD in preparation for that  
8 surgery, they waived thousands of dollars of United Member 8's Member  
9 Responsibility Amounts. Specifically, Counterclaim Defendants submitted a UB-  
10 04 claim form to United on or around XX, 2011 reflecting that Valencia Surgery  
11 Center's total facility charge for the EGD was \$13,790.00. Of this, United Member  
12 8 was responsible for paying \$5,516 in co-insurance (40% of the charge); this  
13 amount, however, was not collected from United Member 8. In reliance on  
14 Counterclaim Defendants' representations, however, United paid \$8,274.00 toward  
15 United Member 8's EGD. Additionally, between XX 2010 and XX 2011,  
16 Counterclaim Defendants submitted claims for twelve different labs and tissue  
17 analyses by Valencia Laboratory LLC, all of which were also supposedly  
18 undertaken in connection with the EGD and in preparation for the Lap Band  
19 surgery. United paid Counterclaim Defendants \$474.97 for these services.

20       146. Second, Counterclaim Defendants submitted claims for a face-to-face  
21 nutrition consultation in preparation for the Lap Band surgery. However, United  
22 Member 8 never met with a nutritionist and does not recognize the name of the  
23 billing provider. The examination form reflecting this service was, upon  
24 information and belief, populated using responses that United Member 8 gave on  
25 her intake paperwork.

26       147. Third, Counterclaim Defendants submitted claims and examination  
27 records for two types of face-to-face psychological interview and testing. However,  
28 United Member 8 never met with a psychologist or psychiatrist.

a) Specifically, Counterclaim Defendants submitted claims and medical records for two different psychological services that were supposedly rendered on XX, 2010. However, the “Psychological Consultation Patient Eligibility for Bariatric Surgery” note is a generic computer-generated form that does not provide the name of the examining psychologist or physician or the location of the consultation. Further, the information reflected on the form is generic and could have been populated simply by merging the responses United Member 8 gave on her intake forms.

b) Claims for these “psychological evaluation” services were first submitted to United in XX 2011 under CPT codes 90801 (psychological diagnostic interview examination) and 96101 (psychological testing by psychiatrist or physician). The claims form reflected total charges of \$725 and \$610, respectively, for these services.

c) When the claims for these two psychological services were initially submitted to United in XX 2011, they both listed 1518032218 as the “Billing Provider’s NPI.” This NPI, however, is registered to Dr. Ariel Malamud, M.D., an internist/gastroenterologist practicing in Los Angeles. The claim form names Skin Cancer & Reconstructive Surgery Specialists of Beverly Hills as the “Servicing Provider,” but the “Servicing Provider’s Address” is that of Valencia Surgery Center—not the Skin Cancer clinic. United responded by requesting additional information to support these claims. When the claims were re-submitted almost a full year later under the same provider information, United denied the claims for lack of proper documentation and support.

d) Eleven months later, in or around XX 2012, these claims were submitted again—this time, however, Counterclaim Defendants listed Dr. Martin Alex Perea, 9001 Wilshire Blvd., Suite 106, as the provider, and listed Dr. Perea’s NPI number as both the Billing Provider’s NPI and the Servicing Provider’s NPI.

e) United did not pay these claims, but they serve as an illustration of the types of deceptive tactics Counterclaim Defendants have utilized in billing United for fraudulent services.

148. Fourth, Counterclaim Defendants submitted claims stating that United Member 8 underwent two pre-EGD examinations or consultations on XX, 2010. One of these was billed under CPT code 99243, which requires the physician to conduct a detailed history, detailed examination, and engage in low complexity medical decision making. The second of these exams was billed under 99204, a new patient office examination, which requires the physician to conduct a comprehensive history, comprehensive examination, and engage in moderate to complex medical decision making. However, the examinations performed on United Member 8 in support of these claims consisted primarily of asking whether United Member 8 had fasted and if she was feeling well, and did not qualify for billing at the heightened exam codes. Nor is there any indication in any of the medical records as to why two separate examinations, at charges of \$650 and \$600, respectively, were warranted. United paid a small amount toward these claims, which again serve as illustrations of the types of fraudulent billing practices utilized by Counterclaim Defendants.

149. Finally, Counterclaim Defendants submitted claims for an abdominal ultrasound which was also allegedly conducted on XX, 2010. However, United Member 8 does not have any knowledge that this procedure was ever performed. The Ultrasound record is a computer print-out with an electronic signature by Dr. Mednik. In response to a claim form submitted to United on or around XX, 2010, United, who was unaware that United Member 8 would contest the claim, paid Counterclaim Defendants \$4,375.00 for this service.

150. In sum, the Counterclaim Defendants fraudulently induced United Member 8 into obtaining medical services that they knew were not medically necessary and not undertaken for the purpose represented since there was no need

1 to “clear” United Member 8 for Lap Band surgery. United Member 8 would never  
2 have undergone the EGD procedure, which ultimately caused her severe injury, or  
3 any other services, if the Counterclaim Defendants had not told her that she was  
4 approved for the Lap Band procedure and that their services would not cost her  
5 anything out of pocket. Further, the Counterclaim Defendants fraudulently  
6 represented the nature and scope of their services on claims forms submitted to  
7 United for payment.

8 151. Given Counterclaim Defendants’ undisclosed waiver of Member  
9 Responsibility Amounts, United owed Counterclaim Defendants nothing for these  
10 services. Furthermore, United should have paid nothing for services which were  
11 not rendered. Thus, the Counterclaim Defendants are liable to reimburse United, on  
12 behalf of the relevant plan, \$8,748.97, plus interest and attorneys’ fees. United is  
13 also entitled to a declaration that the Counterclaim Defendants are not entitled to  
14 receive any payment on the outstanding bills for services to United Member 8 from  
15 United and Patient 8’s employer sponsored plan. In addition (and alternatively), the  
16 Counterclaim Defendants are liable to reimburse United for any other payments  
17 made to the Counterclaim Defendants for services provided to United Member 8  
18 that would not have been provided but for the promises of the Counterclaim  
19 Defendants to waive any obligation to pay anything beyond what United would  
20 pay.

21 **2. United Member 1**

22 152. During the times relevant hereto, United Member 1 was covered by an  
23 employer sponsored health benefit plan for which United serves as a claims  
24 administrator. The terms of this health benefit plan specifically excluded from  
25 coverage any “expenses for health services and supplies” for which the member has  
26 “no legal responsibility to pay” or for which an out-of-network provider “waives  
27 the Copay, Annual Deductible or Coinsurance amounts.”

1       153. United Member 1 had Lap Band surgery on XX, 2010. On or around  
2 XX, 2011, Counterclaim Defendants, through Beverly Hills Surgery Center,  
3 submitted facility claims to United for a total of \$88,825 for United Member 1's  
4 Lap Band surgery , including the following:

5       a)      \$75,890 Lap Band (CPT code 43770), broken down as:

- 6           i.    \$32,000 – Recovery Room
- 7           ii.   \$31,000 – Operating Room
- 8           iii.   \$8,480 – Surgical Tray
- 9           iv.   \$2,950 – Anesthesia Supplies
- 10           v.    \$750 – Pre-Op Room
- 11           vi.   \$710 – Administration of Drugs

12       b)      \$12,935 – Anesthesia

13       154. Separately, Skin Cancer & Reconstructive Surgery Specialists LLC  
14 submitted a claim to United with billed charges of \$6,500 (CPT code 43770) for  
15 professional fees for the Lap Band placed on XX, 2010.

16       155. Despite the fact that Counterclaim Defendants have submitted claims  
17 in excess of \$95,000 for United Member 1's Lap Band surgery, this procedure is a  
18 laparoscopic outpatient procedure. According to the NIH, laparoscopic gastric  
19 banding surgery "is done using a tiny camera that is placed in [the patient's] belly,"  
20 which allows the surgeon to see inside the belly.

21 <http://www.nlm.nih.gov/medlineplus/ency/article/007388.htm>. Generally, the  
22 surgeon makes one to five small surgical cuts in the patient's abdomen and places a  
23 camera and the surgical instruments inside these cuts. The surgeon then places a  
24 Lap Band around the upper corner of the patient's stomach to separate it from the  
25 lower part. This creates a small pouch that has a narrow opening that goes into the  
26 larger, lower part of the patient's stomach. The surgery does not involve any  
27 cutting or stapling inside the belly. The purpose of this surgery is to restrict food  
28 intake—when the patient eats after the surgery, the small pouch will fill up quickly,

1 and the patient will feel full after eating just a small amount of food. After the  
2 surgery, a physician can adjust the band to make food pass more quickly or slowly  
3 through the patient's stomach.

4 156. Medical records show United Member 1's Lap Band surgery lasted 32  
5 minutes—for which United Member 1 was reportedly charged a \$31,000 operating  
6 room fee. Further, despite being charged \$32,000 for use of Beverly Hills Surgical  
7 Center's recovery room, United Member 1's medical records show that United  
8 Member 1 was discharged just 80 minutes after United Member 1's anesthesia  
9 ended.

10 157. The charges submitted for United Member 1's Lap Band are  
11 dramatically higher than the reasonable cost for such services. For example, as  
12 described more fully below, United is informed and believes the Counterclaim  
13 Defendants charged \$18,000 to patients who paid cash for such services.

14 158. United processed United Member 1's claims, paying \$1,928.03 for the  
15 anesthesia, for which United Member 1's coinsurance obligation was \$396.05, and  
16 paying \$1,904 for the professional fees, for which United Member 1's coinsurance  
17 obligation was \$816. United did not approve any payment on the excessive  
18 \$75,890 bill.

19 159. Additionally, United paid claims for United Member 1's Lap Band  
20 "follow-up" visits on XX, 2010, XX, 2010, and XX, 2011.

21 a) Specifically, Counterclaim Defendants submitted claims for two  
22 services on XX, 2010—a Lap Band adjustment (CPT Code S2083) and an  
23 outpatient office visit (CPT Code 99213) for total charges of \$3,300 and \$450,  
24 respectively. Both of these claims were submitted on or around XX, 2010 by  
25 Counterclaim Defendants on behalf of Dr. Atul Madan, under the NPI numbers for  
26 Lapband Specialists, LLC, which was registered by Cloud, Jaroscak, and Pezeshk,  
27 and operates out of the Omidis' office at Suite 106, and Dr. Madan, a physician  
28 who has performed many services at Counterclaim Defendant surgical centers.

1       United paid a total of \$1,150.80 for these services, while United Member 1's  
2 coinsurance obligation was \$493.50.

3               b)     Additionally, Counterclaim Defendants submitted a claim for an  
4 additional Lap Band follow-up visit (CPT code 99213) with Dr. Madan on XX,  
5 2010. This claim was submitted to United on behalf of Dr. Madan, under the NPI  
6 numbers for LapBand Specialists, LLC and Dr. Madan, on or around XX, 2010.  
7 United paid a total of \$100.80 for these services, while United Member 1's  
8 coinsurance obligation was \$43.20.

9               c)     Finally, Counterclaim Defendants submitted claims for two  
10 services on XX, 2011—a Lap Band adjustment (CPT Code S2083) and an  
11 outpatient office visit (CPT Code 99213) for total charges of \$3,300 and \$450,  
12 respectively. Both of these claims were submitted to United on or around XX,  
13 2011 for services provided by Dr. Madan. However, the claim was submitted by  
14 ATMA Medical, Inc., which is registered with the NPI Registry and the California  
15 Medical Board as a physician-owned entity operating out of mailbox 1409 at the  
16 Beverly Hills Postal Place and/or Suite 106 at 9001 Wilshire Blvd., as owned by  
17 Dr. Elliot Alpert. United is informed and believes that Counterclaim Defendants  
18 submitted these claims under ATMA Medical, Inc. because United had denied  
19 similar claims submitted under Dr. Madan's name in the months before this date of  
20 service. United paid \$1,274 for these services, while United Member 1's  
21 coinsurance obligation was \$546.

22               160. Consistent with their promises to patients to waive Member  
23 Responsibility Amounts that were not disclosed to United, the Counterclaim  
24 Defendants did not collect the \$2,294.75 in coinsurance owed by United Member 1.  
25 United Member 1 has informed United that United Member 1 was told, prior to  
26 receiving services from Counterclaim Defendants, that there would be "absolutely"  
27 no out-of-pocket expense relating to Counterclaim Defendants' services. Indeed,  
28 United Member 1 has informed United that United Member 1 would never have

1 agreed to undergo Lap Band surgery if United Member 1 had known United  
2 Member 1 would be responsible for a co-payment.

3 161. Given Counterclaim Defendants' undisclosed waiver of Member  
4 Responsibility Amounts, under the terms of United Member 1's plan, United owed  
5 Counterclaim Defendants nothing for these services. Thus, the Counterclaim  
6 Defendants are liable to reimburse United, on behalf of the relevant plan,  
7 \$6,357.63, plus interest and attorneys' fees. United is also entitled to a declaration  
8 that the Counterclaim Defendants are not entitled to receive any payment on the  
9 \$75,890 bill for these services. In addition (and alternatively), the Counterclaim  
10 Defendants are liable to reimburse United for any other payments made to the  
11 Counterclaim Defendants for services provided to United Member 1 that would not  
12 have been provided but for the promises of the Counterclaim Defendants to waive  
13 any obligation to pay anything beyond what Untied would pay.

14 162. Despite inducing United Member 1 to undertake these out-of-network  
15 services by falsely assuring no Member Financial Responsibility, United is  
16 informed and believes that the Counterclaim Defendants are now improperly  
17 seeking to collect the balance of the bills for the XX, 2010 services directly from  
18 the patient. Not only should this balance billing not be allowed as it is inconsistent  
19 with the Counterclaim Defendants' prior promises to United Member 1, it also  
20 highlights the Counterclaim Defendants' divergence of interests from those of their  
21 patients.

22 **3. United Member 2**

23 163. During the times relevant hereto, United Member 2 was covered by an  
24 employer sponsored health benefit plan for which United serves as a claims  
25 administrator. United Member 2's health benefit plan specifically excludes from  
26 coverage "Health services for which you have no legal responsibility to pay, or for  
27 which a charge would not ordinarily be made in the absence of coverage under the  
28 Plan" and also provides that "[i]n the event that a Non-Network provider waives

1 Copayments and/or the Annual Deductible for a particular health service, no  
2 Benefits are provided for" such health services.

3 164. Counterclaim Defendants, through San Diego ASC, submitted a claim  
4 to United with billed charges of \$13,890 for an EGD procedure (CPT code 43239)  
5 performed on United Member 2 on XX, 2010. Separately, Skin Cancer Surgery  
6 Specialists submitted claims to United with billed charges of \$650 and \$375 for an  
7 office consultation and electrocardiogram on this same date.

8 165. United processed these claims, with the amounts allowed for the  
9 office consultation and electrocardiogram being \$300 and \$103, which were  
10 supposed to be paid entirely by United Member 2 as part of the out-of-network  
11 deductible. United paid \$9,726.60 for the EGD, and United Member 2 was  
12 obligated by the terms of the plan to pay \$4,163.40 in coinsurance for the EGD,  
13 bringing United Member 2's Member Responsibility Amounts to a total of  
14 \$4,566.40 for this date of service.

15 166. However, consistent with their promises to waive Member  
16 Responsibility Amounts, which were not disclosed to United, the Counterclaim  
17 Defendants affirmatively waived and did not collect the \$4,566.40 owed by United  
18 Member 2. Accordingly, under the terms of United Member 2's plan, United owed  
19 Counterclaim Defendants nothing for these services. Thus, the Counterclaim  
20 Defendants are liable to reimburse United, on behalf of the relevant health benefit  
21 plan, \$9,726, plus interest and attorneys' fees. In addition, the Counterclaim  
22 Defendants are liable to reimburse United, on behalf of the relevant plan, for any  
23 other payments made to the Counterclaim Defendants for services provided to  
24 United Member 2 that would not have been provided but for the promises of the  
25 Counterclaim Defendants to waive Member Responsibility Amounts, or for which  
26 United Member 2 had no legal responsibility to pay.

27 167. Further, even if the terms of United Member 2's plan did not require  
28 the Counterclaim Defendants to return all amounts paid for services provided to

1 United Member 2, the Counterclaim Defendants are liable to return all amounts  
2 paid for services provided to United Member 2 based on the fraudulent  
3 misrepresentation. Alternatively, the excess amounts received for the EGD  
4 performed on XX, 2010, due to the inflated billed charge amount submitted for the  
5 EGD performed on that date.

6 168. The Counterclaim Defendants' billed charge of \$13,890 for the EGD  
7 greatly exceeds a reasonable or appropriate charge for this procedure. A reasonable  
8 or appropriate billed charge for this EGD would be less than half of this amount,  
9 with the precise amount to be proven at trial. Thus, alternatively, if the  
10 Counterclaim Defendants are not liable to reimburse United, on behalf of United  
11 Member 2's plan, for the entire amount paid, they are liable to reimburse United for  
12 the excess amount paid due to the submission by the Counterclaim Defendants of  
13 an inflated billed charge and receipt of payment beyond that authorized by the  
14 terms of the plan, including the limitations therein on eligible expenses.

15 **4. United Member 3**

16 169. During the times relevant hereto, United Member 3 was covered by an  
17 employer sponsored health benefit plan for which United serves as a claims  
18 administrator. United Member 3's benefit plan excludes from coverage "Health  
19 services for which you have no legal responsibility to pay, or for which a charge  
20 would not ordinarily be made in the absence of coverage under the Plan," and  
21 excludes from coverage services "for which a non-Network Provider waives the  
22 Copay, Annual Deductible, or Coinsurance amounts."

23 170. Counterclaim Defendants, through Valencia ASC, submitted a claim to  
24 United on or around XX, 2010, with billed charges totaling \$13,790 for an EGD  
25 procedure (CPT code 43239) performed on United Member 3 on XX, 2010,  
26 including:  
27

28 a) EGD (CPT code 43239)

i. \$6,000 – Operating Room

- ii. \$5,000 – Recovery Room
- iii. \$1,110 – Sterile Supplies
- iv. \$1,080 – Anesthesia Supplies
- v. \$350 – Administration of Drugs
- vi. \$250 – Pre-Op Room

171. United processed this claim, and paid \$12,979.16 for the EGD; United Member 3 was obligated by the terms of the plan to pay \$810.84 in coinsurance for the EGD.

172. United Member 3 underwent Lap Band surgery on XX, 2010, which United covered. While United covered a number of follow-up visits and Lap Band adjustments for United Member 3, United denied reimbursement for excessive follow-up visits and adjustments billed under Dr. Tashjian's name and NPI number. In response, Counterclaim Defendants began submitting claims for follow-up services performed by Dr. George Tashjian in fall of 2011 under the TIN and NPI number for "GETA Medical, Inc.," a company established by Dr. Alpert, and others under the Omidis' control to collect physician fees that would not otherwise be paid. On XX, 2012, United paid Counterclaim Defendants \$1,820 for an office visit and Lap Band adjustment performed by Dr. Tashjian on XX, 2011. United Member 3 was responsible paying for \$455 on these claims.

173. However, consistent with their promises to patients to waive Member Responsibility Amounts, which were not disclosed to United, the Counterclaim Defendants affirmatively waived and did not collect the \$1,265.84 owed by United Member 3. Accordingly, under the terms of United Member 3's plan, United owed Counterclaim Defendants nothing for the services provided on this date. Thus, the Counterclaim Defendants are liable to reimburse United, on behalf of the relevant plan, \$14,799.16, plus interest and attorneys' fees. In addition, the Counterclaim Defendants are liable to reimburse United, on behalf of the relevant plan, for any other payments made to the Counterclaim Defendants for services provided to

1 United Member 3 that would not have been provided but for the promises of the  
2 Counterclaim Defendants to waive Member Responsibility Amounts.

3 174. Further, the Counterclaim Defendants' billed charge of \$13,890 for  
4 the EGD greatly exceeds a reasonable or appropriate charge for this procedure. A  
5 reasonable or appropriate billed charge for this EGD would be less than half of this  
6 amount, with the precise amount to be proven at trial. Thus, alternatively, if the  
7 Counterclaim Defendants are not liable to reimburse United, on behalf of United  
8 Member 3's plan, for the entire amount paid, they are liable to reimburse United for  
9 the excess amount paid due to the submission by the Counterclaim Defendants of  
10 an inflated billed charge and receipt of payment beyond that authorized by the  
11 terms of the plan, including the limitations therein on eligible expenses.

12 5. **United Member 9**  
13

14 175. During the times relevant hereto, United Member 9 was covered by an  
15 employer sponsored health benefit plan for which United serves as a claims  
16 administrator. The terms of this health benefit plan specifically exclude expenses  
17 for health services and supplies "for which a non-Network Provider waives the  
18 Copay, Annual Deductible or Coinsurance amounts."

19 176. In 2009, United Member 9 called the 1-800-GET-THIN phone line  
20 after seeing the billboard advertisements. United Member 9 told the operator he  
21 was interested in getting the Lap Band to help him lose weight, and he was referred  
22 to Counterclaim Defendants' facility in Covina, California. United Member 9  
23 attended a seminar at the Covina facility where a doctor described the Lap Band  
24 procedure and explained how it worked. There were three to four other people at  
25 the seminar. When the seminar presentation finished, United Member 9 was told he  
26 could schedule the Lap Band procedure.

27 177. According to claims submitted to United, United Member 9 underwent  
28 a series of services by Counterclaim Defendants on XX, 2009 at one of the clinics  
located at 9001 Wilshire, Suite 106, Beverly Hills. United was billed for two

1 different office consultations, a series of lab tests, and an EGD with biopsy. In XX  
2 2009, United paid a total of \$11,706.55 for these services, while United Member 9  
3 was responsible for at least \$2,794.71 in coinsurance and deductible amounts.  
4 However, United Member 9 only reported to the Beverly Hills location once—for  
5 the Lap Band procedure—and that he did not undergo any pre-Lap Band testing,  
6 including an EGD, at any facility.

7 178. On XX, 2009, United Member 9 underwent Lap Band surgery at  
8 Counterclaim Defendants' 9001 Wilshire Blvd., Suite 106, Beverly Hills, location.  
9 He also underwent a series of follow-up visits at the Counterclaim Defendants'  
10 Covina facility, where the Lap Band was adjusted. For follow-up visits with Dr.  
11 Tashjian on XX, 2010 and XX, 2010, United paid \$1,314 while United Member 9  
12 was responsible for \$879 in coinsurance for these services.

13 179. Like the other United Members referenced herein, Counterclaim  
14 Defendants told United Member 9 that his insurance would pay for all expenses  
15 associated with the Lap Band surgery and that he would not be responsible for any  
16 out of pocket expenses. Indeed, United Member 9 did not pay any part of the  
17 expenses incurred in connection with Counterclaim Defendants' services.

18 180. Consistent with their promises to patients to waive Member  
19 Responsibility Amounts, which were not disclosed to United, the Counterclaim  
20 Defendants affirmatively waived and did not collect the \$3,673.71 which would be  
21 owed by United Member 9 for these services. Accordingly, under the terms of  
22 United Member 9's plan, United owed Counterclaim Defendants nothing for the  
23 services provided on this date. Furthermore, United should have paid nothing for  
24 services which were not rendered. Thus, the Counterclaim Defendants are liable to  
25 reimburse United, on behalf of the relevant plan, \$13,020.55, plus interest and  
26 attorneys' fees. In addition, the Counterclaim Defendants are liable to reimburse  
27 United, on behalf of the relevant plan, for any other payments made to the  
28 Counterclaim Defendants for services provided to United Member 9 that would not

1 have been provided but for the promises of the Counterclaim Defendants to waive  
2 Member Responsibility Amounts.

3       **6. United Member 10**

5       181. During the times relevant hereto, United Member 10 was covered by  
6 an employer sponsored health benefit plan for which United serves as a claims  
7 administrator. Per the terms of this health benefit plan, the plan does not cover  
8 “services and supplies for which the [member] is not legally required to pay.”

9       182. United Member 10 was referred to the Omidi Network by a friend who  
10 worked in the same office complex as Counterclaim Defendants’ facility in Apple  
11 Valley, California. United Member 10 attended a seminar regarding the details of  
12 the procedure, and United Member 10 provided insurance information to the Omidi  
13 representative working on her account. Counterclaim Defendants told United  
14 Member 10 that United would pay all costs associated with their services and that  
15 she would not be responsible for any out of pocket costs.

16       183. United Member 10 was immediately provided a litany of services,  
17 including two sets of psychological testing, an EGD with biopsy, and multiple  
18 consultations. United Member 10 was told that she needed to undergo these  
19 services in order to qualify for the Lap Band surgery.

20       184. United Member 10 had Lap Band surgery on XX, 2009 at Almont  
21 ASC. Counterclaim Defendants submitted total billed charges of \$102,050.00 for  
22 the Lap Band surgery. United paid \$64,400.30 of this, while United Member 10  
23 was responsible for paying at least \$1,520 in coinsurance for these services.

24       185. However, Counterclaim Defendants told United Member 10 that  
25 United would cover all costs relating to the Lap Band surgery, and United Member  
26 10 paid nothing toward the Lap Band surgery.

27       186. Post-surgery, Counterclaim Defendants attempted to collect additional  
28 payments from United Member 10, including, among others, her co-insurance  
obligations for the podiatrist services. United Member 10 was not even aware that

1 Counterclaim Defendants were out of network providers until after she received the  
2 bills. When United Member 10 called Counterclaim Defendants and told them she  
3 was told that her insurance would pay for everything and that she would not be  
4 financially responsible for any out of pocket expenses, Counterclaim Defendants  
5 informed United Member 10 that they would accept United's payment as full  
6 payment, and has not tried to bill United Member 10 since.

7 187. Consistent with their promises to patients to waive Member  
8 Responsibility Amounts, which were not disclosed to United, the Counterclaim  
9 Defendants affirmatively waived and did not collect the \$1,520 owed by United  
10 Member 10. Accordingly, under the terms of United Member 10's plan, United  
11 owed Counterclaim Defendants nothing for the services provided on this date.  
12 Thus, the Counterclaim Defendants are liable to reimburse United, on behalf of the  
13 relevant plan, \$64,400.30, plus interest and attorneys' fees. In addition, the  
14 Counterclaim Defendants are liable to reimburse United, on behalf of the relevant  
15 plan, for any other payments made to the Counterclaim Defendants for services  
16 provided to United Member 10 that would not have been provided but for the  
17 promises of the Counterclaim Defendants to waive Member Responsibility  
18 Amounts.

19 **7. United Member 11**

20 188. During the times relevant hereto, United Member 11 was covered by  
21 an employer sponsored health benefit plan for which United serves as a claims  
22 administrator. Per the terms of this health benefit plan, the plan does not cover  
23 "services and supplies for which the [member] is not legally required to pay."

24 189. United Member called 1-800-GET-THIN after hearing advertisements  
25 on the radio. United Member 11 attended an informational seminar at one of  
26 Counterclaim Defendants' facilities regarding information about the Lap Band. A  
27 number of other individuals also attended the same seminar. A representative of  
28 Counterclaim Defendants took United Member 11's insurance information, and

1 subsequently told United Member 11 that Counterclaim Defendants had contacted  
2 his insurance company and that he was “100 percent covered.” This representative  
3 also told him that he did not have to pay for anything, and that he would be  
4 responsible for no out of pocket costs or deductibles. United Member 11 was not  
5 told that Counterclaim Defendants were out of network providers prior to receiving  
6 medical services.

7       190. According to claims records submitted by Counterclaim Defendants,  
8 United Member 11 underwent the following services on XX, 2009: (1) a  
9 psychological interview (CPT code 90801) with Melissa Baily-Arizpe for total  
10 billed charges of \$200; (2) an EGD with biopsy (CPT codes 43239 and 740) for  
11 total billed charges of \$19,970; (3) a “new patient” office consultation in  
12 preparation for the EGD (CPT code 99204), for total billed charges of \$294; (4) an  
13 abdominal ultrasound (CPT code 76700) for total billed charges of \$4,250; and (5)  
14 lab fees for total billed charges of \$703.50.

15       191. United paid \$13,431.09 for these services, while United Member 11  
16 was responsible for \$2,225.91 in coinsurance and deductible amounts.

17       192. United Member 11 has informed United that he does not recall having  
18 the XX, 2009 psychological examination.

19       193. Consistent with their promises to patients to waive Member  
20 Responsibility Amounts, which were not disclosed to United, the Counterclaim  
21 Defendants affirmatively waived and did not collect the \$2,225.91 owed by United  
22 Member 11. Accordingly, under the terms of United Member 11’s plan, United  
23 owed Counterclaim Defendants nothing for the services provided on this date.  
24 Thus, the Counterclaim Defendants are liable to reimburse United, on behalf of the  
25 relevant plan, \$13,431.09, plus interest and attorneys’ fees. In addition, the  
26 Counterclaim Defendants are liable to reimburse United, on behalf of the relevant  
27 plan, for any other payments made to the Counterclaim Defendants for services  
28 provided to United Member 11 that would not have been provided but for the

promises of the Counterclaim Defendants to waive Member Responsibility Amounts.

## 8. United Member 12

194. During the times relevant hereto, United Member 12 was covered by an employer sponsored health benefit plan for which United serves as a claims administrator. The terms of this health benefit plan requires that United (as Claims Administrator) be “advised of any discounts or price adjustments made to [the member] by any provider,” and it makes clear that it will only pay based upon the actual charges, and that any such undisclosed price adjustments “constitutes a serious violation of the provisions of the Plan.” It also excludes from coverage “charges that would not have been made if [the member] didn’t have this coverage,” and “charges [the member] is not legally required to pay.”

195. In 2010, United Member 12 was interested in having weight loss surgery. United Member 12 inquired about weight loss services at various providers and attended seminars put on by two or three different weight loss companies. The representatives at these seminars informed United Member 12 that he would be charged for the Lap Band surgery.

196. United Member 12 then called 1-800-GET-THIN after seeing a television advertisement. He attended the informational seminar and provided Counterclaim Defendants with his insurance information. Counterclaim Defendants advised United Member 12 that they contacted United and that United Member 12 would have no out-of-pocket expenses or any other costs associated with the Lap Band surgery, and that the providers would accept the amounts paid by United as payment in full. In reliance on these statements, and, in fact, because the Lap Band surgery would be free of cost, United Member 12 elected to undergo Lap Band surgery with Counterclaim Defendants.

197. United Member 12 has informed United that, in preparation for the surgery, United Member 12 underwent an EGD procedure, walked on a treadmill,

1 and had his gallbladder removed after an ultrasound. United Member 12 did not  
2 have any sleep apnea tests, psychological testing, or nutritional assessments prior to  
3 his Lap Band surgery.

4 198. Claims submitted by Counterclaim Defendants reflect that, on XX,  
5 2010, United Member 12 underwent an EGD with biopsy (CPT codes 43239 and  
6 740) for total billed charges of \$22,330 and two office consultations (CPT codes  
7 99243 and 99204) for total billed charges of \$1,250. United paid \$5,197 for these  
8 services, while United Member 12 was responsible for paying \$1,390.50 toward  
9 these services.

10 199. United Member 12 subsequently underwent Lap Band surgery on XX,  
11 2010. After his surgery, United Member 12 began experiencing stomach problems  
12 and contacted Counterclaim Defendants, who told him to come in for a follow-up  
13 appointment. United Member 12 thought the billed charges for the follow-up  
14 appointments were excessive, however, and noticed that the Counterclaim  
15 Defendants billed for Lap Band adjustments even when they did not adjust his Lap  
16 Band.

17 200. United paid more than \$122,000 to Counterclaim Defendants for  
18 services supposedly rendered to United Member 12. However, United Member 12  
19 never paid any amounts toward any services rendered.

20 201. Further, despite the fact that United Member 12 did not undergo any  
21 treatment for sleep apnea or psychological testing, Counterclaim Defendants  
22 submitted, on multiple occasions between XX, 2010 and XX, 2012, claims to  
23 United for \$27,765 in sleep apnea treatment purportedly provided on XX, 2010.  
24 Counterclaim Defendants likewise submitted \$725 in claims for a psychological  
25 examination purportedly conducted on XX, 2010. United did not pay claims for  
26 these services, but they are illustrative of Counterclaim Defendants' fraudulent  
27 billing practices.

202. Consistent with their promises to patients to waive Member Responsibility Amounts, which were not disclosed to United, the Counterclaim Defendants affirmatively waived and did not collect the \$1,390.50 owed by United Member 12. Accordingly, under the terms of United Member 12's plan, United owed Counterclaim Defendants nothing for the services provided on this date. Thus, the Counterclaim Defendants are liable to reimburse United, on behalf of the relevant plan, \$5,197 plus interest and attorneys' fees. In addition, the Counterclaim Defendants are liable to reimburse United, on behalf of the relevant plan, for any other payments made to the Counterclaim Defendants for services provided to United Member 12 that would not have been provided but for the promises of the Counterclaim Defendants to waive Member Responsibility Amounts.

## 9. United Member 13

203. During the times relevant hereto, United Member 13 was covered by an employer sponsored health benefit plan for which United serves as a claims administrator. The terms of this health benefit plan requires that United (as Claims Administrator) be “advised of any discounts or price adjustments made to [the member] by any provider,” and it makes clear that it will only pay based upon the actual charges, and that any such undisclosed price adjustments “constitutes a serious violation of the provisions of the Plan.” It also excludes from coverage “charges that would not have been made if [the member] didn’t have this coverage,” and “charges [the member] is not legally required to pay.”

204. United Member 13 contacted Counterclaim Defendants to inquire about Lap Band surgery in 2009. Prior to receiving any services, United Member 13 provided her insurance information to a representative of Counterclaim Defendants. The representative told her that Counterclaim Defendants' bariatric services, including Lap Band surgery, would be covered entirely by insurance and that United Member 13 would not have to pay any out of pocket expenses. United

1 Member 13 could not afford to pay for any medical expenses at the time and would  
2 not have undertaken the Lap Band surgery had she known she would be responsible  
3 for out of pocket expenses.

4 205. United Member 13 was initially told by a representative of  
5 Counterclaim Defendants that she needed to gain 15 pounds in order to qualify for  
6 the Lap Band surgery. After United Member 13 gained the required 15 pounds,  
7 United Member 13 called and arranged to have the Lap Band surgery.

8 206. On XX, 2009, United Member 13 underwent an EGD with biopsy  
9 (CPT codes 43239 and 740) for total billed charges of \$15,500, abdominal  
10 ultrasound (CTP code 76700) for total billed charges of \$4,250, and an office  
11 consultation (CPT code 99204) for total billed charges of \$294. United paid  
12 \$8,203.42 for these services, while United Member 13 was responsible for paying  
13 \$916.80 in coinsurance and deductible amounts.

14 207. United Member 13 underwent Lap Band surgery on XX, 2009, which  
15 United covered. Additionally, United paid \$337.50 toward a \$3,300 Lap Band  
16 adjustment provided on XX, 2010; United Member 13 was responsible for paying  
17 \$637.50 toward this claim.

18 208. Consistent with their promises to patients to waive Member  
19 Responsibility Amounts, which were not disclosed to United, the Counterclaim  
20 Defendants affirmatively waived and did not collect the \$1,554.30 owed by United  
21 Member 13. Accordingly, under the terms of United Member 13's plan, United  
22 owed Counterclaim Defendants nothing for the services provided on this date.  
23 Thus, the Counterclaim Defendants are liable to reimburse United, on behalf of the  
24 relevant plan, \$8,540.92 plus interest and attorneys' fees. In addition, the  
25 Counterclaim Defendants are liable to reimburse United, on behalf of the relevant  
26 plan, for any other payments made to the Counterclaim Defendants for services  
27 provided to United Member 13, including the Lap Band surgery, that would not  
28

1 have been provided but for the promises of the Counterclaim Defendants to waive  
2 Member Responsibility Amounts.

3 **10. United Member 15**  
4

5 209. During the times relevant hereto, United Member 15 was covered by  
6 an employer sponsored health benefit plan for which United serves as a claims  
7 administrator.

8 210. United Member 15 contacted Counterclaim Defendants by calling 1-  
9 800-GET-THIN after hearing the Lap Band surgery advertised on the radio. She  
10 then attended a consultation at the clinic in 9001 Wilshire Blvd., Suite 106, and was  
11 told about the process for getting a Lap Band. She also discussed insurance with a  
12 representative of Counterclaim Defendants, and was told that her insurance covered  
13 all costs associated with the Lap Band procedure and that she would not be  
14 responsible for any out of pocket costs for the Lap Band or any associated services.

15 211. After her Lap Band surgery, for which United Member 15 paid no out-  
16 of-pocket expenses, United Member 15 continued to receive services from the  
17 Counterclaim Defendants throughout 2012 and 2013.

18 212. On XX, 2013, United Member 15 underwent a “Lipodystrophy” from  
19 Counterclaim Defendants. This is a cosmetic procedure where excess skin is  
20 removed. Counterclaim Defendant IMS billed United a total of \$20,275 for this  
21 procedure under CPT codes 802, 15830, and 99241. In XX 2014, United paid  
22 \$4,755.50 for these services, while United Member 15 was responsible for  
23 \$4,982.50 in coinsurance and deductible for these services.

24 213. Consistent with their promises to patients to waive Member  
25 Responsibility Amounts, which were not disclosed to United, the Counterclaim  
26 Defendants affirmatively waived and did not collect the \$4,982.50 owed by United  
27 Member 15. Accordingly, under the terms of United Member 15’s plan, United  
28 owed Counterclaim Defendants nothing for the services provided on this date.  
Thus, the Counterclaim Defendants are liable to reimburse United, on behalf of the

1 relevant plan, \$4,755.50 plus interest and attorneys' fees. In addition, the  
2 Counterclaim Defendants are liable to reimburse United, on behalf of the relevant  
3 plan, for any other payments made to the Counterclaim Defendants for services  
4 provided to United Member 15 that would not have been provided but for the  
5 promises of the Counterclaim Defendants to waive Member Responsibility  
6 Amounts.

7 **ii. Counterclaim Defendants Concealed Lap Band Surgery on**  
8 **Claims Forms and Instead Billed United Inflated Charges**  
9 **For Hernia Surgery**

10 214. In addition to the routine waiver of Member Responsibility Amounts  
11 described above, United has identified a unique type of fraudulent billing practice  
12 which Counterclaim Defendants engaged in on multiple occasions, including for  
13 United Members 4-6. When faced with a benefit plan that did not provide coverage  
14 for Lap Band surgery, Counterclaim Defendants manufactured a reason to perform  
15 a hiatal hernia surgery, which is similar to the Lap Band procedure, at which time  
16 they also placed a Lap Band. They then concealed the existence of the Lap Band  
17 surgery on claims forms and medical records, and billed United exorbitant amounts  
18 for the purported hernia surgery.

19 **1. United Member 4**

20 215. United Member 4 was covered by an employer sponsored health  
21 benefit plan for which United served as a claims administrator.

22 216. On XX, 2009, United Member 4 underwent an EGD with Biopsy at  
23 the Beverly Hills Surgery Center clinic in preparation for contemplated Lap Band  
24 surgery.

25 217. Dr. Arman Feliksovich Karapetyan, M.D.'s report from this same date,  
26 labeled "Medical Clearance Form: Initial Preoperative Evaluation," states that this  
27 patient "has elected to proceed with the lap band procedure pending the clearances  
28 requested by [United Member 4's] surgeon and is here today for a comprehensive

1 pre-operative evaluation and medical clearance in order to proceed with United  
2 Member 4's bariatric procedure." Notably, this report further states that United  
3 Member 4 did not have any hernias, and that the abdomen was "soft, Non Tender to  
4 palpation and Normal BS."

5 **a. United Denies Authorization for Lap Band**  
6 **Surgery in 2009**

7 218. On XX, 2009, United sent a letter to United Member 4 and Beverly  
8 Hills Surgery Center denying coverage for the requested Lap Band procedure  
9 because it was not covered under United Member 4's health plan. The letter stated,  
10 "Based on the information submitted and your health benefit plan, we determined  
11 that the health care services are not covered. The services are not eligible expenses  
12 under your plan."

13 **b. Counterclaim Defendants Perform A Second**  
14 **EGD in 2010**

15 219. On XX, 2010, the month after Counterclaim Defendants were notified  
16 that United Member 4's Lap Band surgery would not be covered, Counterclaim  
17 Defendants Beverly Hills Surgical Center and Skin Cancer Surgery Specialists,  
18 together with Dr. Atul Madan, performed a second EGD on United Member 4. The  
19 Anesthesia Record for this EGD shows that this patient was under anesthesia for a  
20 total of seven minutes, and that the procedure lasted only two minutes. The  
21 Recovery Room records reflect that United Member 4 was discharged just over 30  
22 minutes later. The Operative Report now recorded a hiatal hernia with a  
23 recommendation for hernia surgery.

24 220. United is informed and believes that this second, two-minute EGD  
25 procedure, which came less than three months after the first EGD, was unnecessary.  
26 The second EGD was performed in order to manufacture and document a reason to  
27 perform a hiatal hernia repair surgery, which would then allow the Counterclaim  
28 Defendants to simultaneously place a Lap Band, and secure reimbursement for the

uncovered Lap Band by the submission of bills that contained inflated charges for the hernia repair surgery, but omitted all reference to the simultaneously-performed Lap Band surgery.

221. United, on behalf of United Member 4's health plan, paid \$5,338.54 for the unnecessary services performed on this date.

c. **Counterclaim Defendants Subsequently Perform Combined Lap Band and Hernia Repair Surgery**

222. Medical records and claims records show that subsequently, on XX, 2010, United Member 4 underwent Lap Band and hiatal hernia surgery.

223. Having been notified only months earlier that the proposed Lap Band surgery was not covered by United Member 4's plan, Counterclaim Defendants Beverly Hills Surgery Center and Skin Cancer Surgery Specialists fraudulently omitted from the claim forms submitted for the services provided on XX, 2010 any mention of the surgical Lap Band placement, despite the fact that the Lap Band was the primary purpose for the XX, 2010 treatment. The omission of the Lap Band surgery from these claim forms makes them false and misleading.

224. The Counterclaim Defendants submitted such fraudulent claim forms in order to secure reimbursement for the uncovered Lap Band placement through the submission of highly inflated charges for the hernia surgery.

225. Counterclaim Defendant Beverly Hills Surgical Center submitted facility claims of \$37,860 under CPT code 39520 for the hernia repair surgery, including:

- a) \$16,500 – Operating Room;
- b) \$15,500 – Recovery Room;
- c) \$2,950 – Anesthesia Supplies;
- d) \$2,150 – Sterile Supplies;
- e) \$410 – Administration of Drugs; and

1 f) \$350 – Pre-Op Hiatal.  
2

3 Beverly Hills Surgical Center also billed \$9,350 for the anesthesiologist, and  
4 \$2,440 for tissue examination. Counterclaim Defendant Skin Cancer Surgery  
5 Specialists billed \$17,500 for professional fees, bringing the total submitted billed  
6 charges to \$67,150 for what was, as billed, supposedly only a hernia repair surgery.

7 226. The facility billed charges of \$37,860 submitted by Beverly Hills  
8 Surgical Center were highly inflated because they really included charges for the  
9 unbilled and uncovered Lap Band surgery. Ordinarily, when the Counterclaim  
10 Defendants performed combined Lap Band surgery and hernia repair surgery, and  
11 both were covered by the health plan in question, the facility charges for the hernia  
12 repair surgery would be less than \$4,000.

13 227. Relying on the representation that only hernia repair surgery had been  
14 performed on XX, 2010, and that the charges submitted were for that surgery only,  
15 United processed the facility claim with billed charges of \$37,860 and paid, on  
16 behalf of United Member 4's plan, \$20,111.26 to Beverly Hill Surgical Center, with  
17 United Member 4's coinsurance obligation being \$888.74. United also paid  
18 \$6,008.29 on the other bills for what supposedly was only a hernia repair surgery.

19 228. Consistent with their promises to patients to waive Member  
20 Responsibility Amounts, which were not disclosed to United, the Counterclaim  
21 Defendants did not, on information and belief, collect the \$888.74 owed by United  
22 Member 4.

23 229. As a result of the fraudulent billing by the Counterclaim Defendants  
24 for the services provided to United Member 4 on XX, 2010, and the unnecessary  
25 services provided earlier on XX, 2010, United Member 4's plan has been damaged  
26 in an amount to be proven at trial. In addition, under the terms of United Member  
27 4's plan, nothing was owed for XX, 2010 services, due to the waiver of Member  
28 Responsibility Amounts. Thus, the Counterclaim Defendants are liable to  
reimburse United, on behalf of the relevant plan, all amounts paid for the XX, 2010

1 services, as well as any other payments made to the Counterclaim Defendants for  
2 services provided to United Member 4, which would not have been provided but for  
3 the promises of the Counterclaim Defendants to waive Member Responsibility  
4 Amounts.

5 **2. United Member 5**

7 230. United Member 5 was covered by an employer sponsored health  
8 benefit plan for which United served as a claims administrator.

9 231. On XX, 2009, United Member 5 underwent an EGD with Biopsy at  
10 the Beverly Hills Surgery Center clinic in preparation for contemplated Lap Band  
11 surgery. Dr. Elliot Alpert's Operative Report for this procedure shows that the  
12 purpose of this procedure was to "rule out any upper GI lesion in preparation for  
13 Lap-Band surgery." The Operative Report also reflects that United Member 5's  
14 duodenum and stomach, including the fundus, body, and antrum "appeared  
15 normal." This report concluded: "Normal upper GI tract."

16 **a. United Denies Pre-Authorization for Lap Band**  
17 **Surgery**

18 232. Shortly after United Member 5's EGD, Counterclaim Defendants  
19 requested pre-authorization from United to perform a Lap Band surgery. However,  
20 United notified "Julian" (whom United is informed and believes to be Julian  
21 Omidi) by telephone conference that a Lap Band was not an eligible expense under  
22 United Member 5's plan. United also notified United Member 5 of this  
23 determination.

24 **b. Counterclaim Defendants Submit Claims**  
25 **Totaling \$24,494 For A Second EGD Procedure**

26 233. Similar to United Member 4, after Counterclaim Defendants received  
27 notice that United Member 5's Lap Band surgery would not be covered by the  
28 employer-sponsored health plan, Counterclaim Defendants conducted an

1 unnecessary second EGD on XX, 2010. The second EGD was performed in order  
2 to manufacture and document a reason to perform a hiatal hernia repair surgery,  
3 which would then allow the Counterclaim Defendants to simultaneously place a  
4 Lap Band, and secure reimbursement for the uncovered Lap Band by the  
5 submission of bills that contained inflated charges for the hernia repair surgery, but  
6 omitted all reference to the simultaneously performed Lap Band surgery.

7 234. United received claims for \$24,494 for the unnecessary EGD and  
8 related procedures from Beverly Hills Surgery Center and Skin Cancer Surgery  
9 Specialists: \$12,200 for the Beverly Hills Surgery Center facility charge; \$4,244 for  
10 the professional endoscopic services of Atul Madan, M.D.; \$3,800 for the  
11 anesthesia services of Eva Toth, CRNA; and an additional \$4,250 for an ultrasound  
12 conducted by George Mednik, M.D.

13 235. United, on behalf of United Member 5's health plan, paid \$14,142.63  
14 for the unnecessary services performed on this date of service.

15 c. **Counterclaim Defendants Misrepresent Services**  
16 **Provided On Claims In Order to Receive**  
17 **Payment for Unauthorized Lap Band Services**

18 236. Medical records and claims records show that on XX, 2010, United  
19 Member 5 underwent Lap Band and hiatal hernia surgery.

20 237. Having been notified in 2009 that the proposed Lap Band surgery was  
21 not covered by United Member 5's plan, Counterclaim Defendants Beverly Hills  
22 Surgery Center and Skin Cancer Surgery Specialists fraudulently omitted from the  
23 claim forms submitted for the services provided on XX, 2010, any mention of the  
24 surgical Lap Band placement, despite the fact that the Lap Band was the primary  
25 purpose of the XX, 2010 treatment. The omission of the Lap Band surgery from  
26 these claim forms makes them false and misleading. The Counterclaim Defendants  
27 submitted such fraudulent claim forms in order to secure reimbursement for the  
28

1 uncovered Lap Band placement through the submission of highly inflated charges  
2 for the hernia surgery.

3 238. As with United Member 4, Counterclaim Defendant Beverly Hills  
4 Surgical Center submitted facility claims with billed charges of \$37,860 under CPT  
5 code 39520 for the hernia repair surgery for United Member 5, and billed charges  
6 of \$2,440 for tissue examination. As with United Member 4, Counterclaim  
7 Defendant Skin Cancer Surgery Specialists billed \$17,500 for professional fees for  
8 the hernia repair surgery for United Member 5.

9 239. The facility billed charges of \$37,860 submitted by Beverly Hills  
10 Surgical Center were highly inflated because they really included charges for the  
11 unbilled and uncovered Lap Band surgery. Ordinarily, when the Counterclaim  
12 Defendants performed combined Lap Band surgery and hernia repair surgery, and  
13 both were covered by the health plan in question, the facility charges for the hernia  
14 repair surgery would be less than \$4,000.

15 240. Relying on the representation that only hernia repair surgery had been  
16 performed on XX, 2010, and that the charges submitted were for that surgery only,  
17 United processed the facility claim with billed charges of \$37,860 and paid, on  
18 behalf of United Member 5's plan, \$22,000 to Beverly Hill Surgical Center. United  
19 also paid \$12,727.00 on the other bills for what supposedly was only a hernia repair  
20 surgery on XX, 2010.

21 241. Consistent with their promises to patients to waive Member  
22 Responsibility Amounts, which were not disclosed to United, the Counterclaim  
23 Defendants did not, on information and belief, collect any Member Responsibility  
24 Amounts owed by United Member 5.

25 242. As a result of the fraudulent billing by the Counterclaim Defendants  
26 for the services provided United Member 5 on XX, 2010, and the unnecessary  
27 services provided earlier on XX, 2010, United Member 5's plan has been damaged  
28 in an amount to be proven at trial. In addition, under the terms of United Member

1 5's plan, nothing was owed for any services provided to United Member 5 that  
2 would not have been provided but for the promises of the Counterclaim Defendants  
3 to waive Member Responsibility Amounts.

4 **3. United Member 6**

5 243. United Member 6 was covered by an employer sponsored health  
6 benefit plan for which United served as a claims administrator.

7 244. On XX, 2009, United Member 6 underwent an EGD with biopsies at  
8 Counterclaim Defendant Beverly Hills Surgery Center in advance of planned Lap  
9 Band surgery. The comments section of the Initial Preoperative Evaluation report  
10 dated XX, 2009 signed by Dr. Arman F. Karapetyan, M.D. states that the patient  
11 needs to sign informed consent with the surgeon for "off-label placement" of the  
12 Lap Band.

13 245. However, United Member 6 did not meet the requirements for  
14 coverage of Lap Band services under United Member 6's health plan. The Initial  
15 Preoperative Evaluation Report dated XX, 2009 indicates that United Member 6's  
16 height is 5'10" and weight is 235, putting BMI at 33.7. United Member 6's Plan  
17 does not provide coverage for Lap Band surgery for individuals whose BMI is less  
18 than 35. Even if United Member 6 met the plan's BMI requirements, bariatric  
19 services such as Lap Band surgeries "must be received at a designated Center of  
20 Excellence facility to be covered." However, none of the Counterclaim Defendant  
21 surgical facilities has ever been designated a Center of Excellence, as that term is  
22 used in the relevant health plan. Thus, coverage under United Member 6's plan  
23 would not have been available for a Lap Band at the Beverly Hills Surgery Center  
24 even if the BMI requirement of 35 or higher had been satisfied.

25 **a. Counterclaim Defendants Perform Lap Band**  
**Surgery On United Member 6 And Bill United**  
**\$61,360 For A Hiatal Hernia Surgery**

1       246. Claims submitted by Counterclaim Defendants Beverly Hills Surgery  
2 Center and Skin Cancer Surgery Specialists show that on XX, 2010, United  
3 Member 6 underwent Lap Band and hiatal hernia surgery.

4       247. Because, as the Counterclaim Defendants were aware, United Member  
5 6 was not covered for Lap Band surgery at Beverly Hills Surgical Center,  
6 Counterclaim Defendants Beverly Hills Surgery Center and Skin Cancer Surgery  
7 Specialists fraudulently omitted from the claim forms submitted for the services  
8 provided on XX, 2010 any mention of the surgical Lap Band placement, despite the  
9 fact that the Lap Band was the primary purpose of this treatment. The omission of  
10 the Lap Band surgery from these claim forms makes them false and misleading.  
11 The Counterclaim Defendants submitted such fraudulent claim forms in order to  
12 secure reimbursement for the uncovered Lap Band placement through the  
13 submission of highly inflated charges for the hernia surgery.

14       248. As with United Members 4 and 5, Counterclaim Defendant Beverly  
15 Hills Surgery Center submitted facility claims with billed charges of \$37,860 under  
16 CPT code 39520 for the hernia repair surgery for United Member 6, and  
17 professional claims with billed charges of \$6,000 for the anesthesiologist fees. As  
18 with United Members 4 and 5, Counterclaim Defendant Skin Cancer Surgery  
19 Specialists billed \$17,500 for professional fees for the hernia repair surgery for  
20 United Member 6.

21       249. The facility billed charges of \$37,860 submitted by Beverly Hills  
22 Surgical Center were highly inflated because they really included charges for the  
23 unbilled and uncovered Lap Band surgery. Ordinarily, when the Counterclaim  
24 Defendants performed combined Lap Band surgery and hernia repair surgery, and  
25 both were covered by the health plan in question, the facility charges for the hernia  
26 repair surgery would be less than \$4,000.

27       250. Relying on the representation that only hernia repair surgery had been  
28 performed on XX, 2010, and that the charges submitted were for that surgery only,

1 United processed the facility claim with billed charges of \$37,860 and paid, on  
2 behalf of United Member 6's plan, \$20,225.12 to Beverly Hills Surgery Center for  
3 facility charges. United also paid \$11,744.89 on the other bills for what supposedly  
4 was only a hernia repair surgery on this date of service. To further conceal their  
5 fraud, Counterclaim Defendants submitted an operative report to United relating to  
6 the hernia repair procedure. However, in subsequent submissions of medical  
7 records, Counterclaim Defendants submitted to United a second, separate operative  
8 report showing that a Lap Band had been placed in addition to the hernia repair.  
9

10 251. Consistent with their promises to patients to waive Member  
11 Responsibility Amounts, which were not disclosed to United, the Counterclaim  
12 Defendants did not, on information and belief, collect any Member Responsibility  
13 Amounts owed by United Member 6.

14 252. As a result of the fraudulent billing by the Counterclaim Defendants  
15 for the services provided United Member 6 on XX, 2010, United Member 6's plan  
16 has been damaged in an amount to be proven at trial. In addition, under the terms  
17 of United Member 6's plan, nothing was owed for any services provided to United  
18 Member 6 that would not have been provided but for the promises of the  
19 Counterclaim Defendants to waive Member Responsibility Amounts.

20 253. The fraudulent billing for United Member 6 continued for services  
21 after the XX, 2010 Lap Band surgery. Bills were submitted to United for the  
22 services of Dr. Madan for outpatient office visits in XX, XX, and XX, 2010.  
23 Medical records show, however, that the purpose of each of these visits was to  
24 provide a Lap Band adjustment. United Member 6 would not have sought these  
25 outpatient services had he not received the Lap Band. Defendants falsely  
26 represented the nature of these visits in an attempt to obtain payment for  
27 unauthorized Lap Band services. United Member 6's plan has been damaged by  
28 this fraud because of the payments made for such services, in an amount to be

proven at trial, which would not have been paid had they been accurately represented as uncovered Lap Band services.

iii. **Counterclaim Defendants Inflated Patients' BMI In An Attempt To Obtain Coverage for Lap Band Services**

254. Body Mass Index, or BMI, is an indicator of body fat and is an important tool for determining the medical necessity of bariatric health services, including Lap Band surgery, for an individual patient. BMI is calculated by dividing a person's weight (in pounds), by their height (in inches) squared, and multiplying by a conversion factor of 703:  $[\text{weight} \div \text{height}^2] \times 703 = \text{BMI}$ . For example, a person who is 5'5" (65") and weighs 150 pounds has a BMI of 24.96:  $[150 \div (65)^2] \times 703 = 24.96$ . While many United Plans do not provide any coverage for bariatric services, many United Plans that do offer coverage for bariatric services require that members have a minimum BMI, usually 35 or 40, in addition to other conditions, in order to qualify for those services. Further, the Lap Band is only FDA-approved for treatment of individuals within a certain BMI range.

255. Medical records show that in some cases Counterclaim Defendants manipulated the height and weight of individual patients in order to, upon information and belief, inflate the United Member's BMI and, in some cases, get prior authorization for Lap Band surgery. In other cases, Counterclaim Defendants submitted Lap Band operative reports that did not accurately represent the patients' BMI on the day of surgery, when compared to the height and weight measurements recorded by Counterclaim Defendants on the day of surgery.

## 1. United Member 7

256. For example, medical and claim records show that on XX, 2010, United Member 7 was examined to determine candidacy for a Lap Band. At the time, the provider recorded United Member 7's height as 5'3" and her weight at

1 200 pounds, resulting in a calculated BMI of 35.4. Dr. Au Lee signed United  
2 Member 7's Bariatric Surgery History & Physical Examination Form and  
3 recommended that United Member 7 undergo a Lap Band procedure.  
4

5 257. However, records further show that on XX, 2010, the day United  
6 Member 7 underwent Lap Band surgery, Counterclaim Defendants measured  
7 United Member 7 as standing a full two inches taller—at 5'5"—and weighing 204  
8 pounds, resulting in a calculated BMI of just 33.9. This height is consistent with a  
9 declaration submitted by United Member 7 in earlier litigation stating that United  
10 Member 7 stood at 5'5". In addition, at the time of the Lap Band procedure, United  
11 Member 7's driver's license stated that United Member 7 was 5'6".  
12

13 258. Had Dr. Au recorded United Member 7's true height of at least 5'5"  
14 during the pre-operation examination, he would have calculated United Member 7's  
15 BMI at 33.3. Further, had United Member 7's BMI been accurately measured and  
16 recorded, United Member 7 would not have qualified for bariatric surgery benefits  
17 under United Member 7's health plan, and United would not have been responsible  
18 for any expenses associated with the Lap Band surgery.  
19

20 259. As a result of the fraudulent BMI calculation, United Member 7  
21 underwent a Lap Band procedure at Valley Surgical Center on XX, 2010. The  
22 surgical center subsequently submitted facility claims of at least \$79,990, in  
23 addition to charges for professional services. United processed these claims, paying  
24 Valley Surgical Center \$79,490, on behalf of United Member 7's health plan, with  
25 United Member 7 being responsible for a \$500 deductible. United also paid \$1,785  
26 to West Hills Surgery LLC for the XX, 2010 Lap Band. Consistent with their  
27 promises to patients to waive Member Responsibility Amounts, which were not  
28 disclosed to United, the Counterclaim Defendants did not, on information and  
belief, collect any Member Responsibility Amounts owed by United Member 7.  
Under the terms of United Member 7's plan, nothing was owed for any services  
provided to United Member 7 that would not have been provided but for the

1 promises of the Counterclaim Defendants to waive Member Responsibility  
2 Amounts.

3 260. Following surgery, United Member 7 had numerous adjustments and  
4 other Lap Band-related procedures such as a barium swallow and fluoroscopy. Had  
5 United Member 7's BMI been accurately measured and recorded during the initial  
6 consultation, United Member 7 would not have qualified for a bariatric surgery  
7 benefit under United Member 7's health plan. As a result of the fraudulent BMI  
8 calculation by the Counterclaim Defendants, United Member 7's plan has been  
9 damaged in an amount to be proven at trial. Moreover, United would not be  
10 responsible for any post-operative expenses incurred.

11 **2. United Member 6**

12 261. In another example, medical and claim records also show that  
13 Counterclaim Defendants fraudulently inflated United Member 6's BMI. Indeed,  
14 on XX, 2009 during the pre-operative examination, Counterclaim Defendants  
15 measured United Member 6 as standing 5'10" and weighing 235 pounds. Although  
16 Counterclaim Defendants did not calculate United Member 6's BMI that day, they  
17 would have learned that United Member 6's BMI was only 33.7, thus disqualifying  
18 United Member 6 from any bariatric surgery benefits under United Member 6's  
19 plan.

20 262. Even though United Member 6 did not qualify for bariatric surgery  
21 benefits, Counterclaim Defendants scheduled and performed a Lap Band procedure  
22 on XX, 2010. In the corresponding operative note, Dr. Madan erroneously  
23 recorded United Member 6's height as a full inch shorter—5'9"—and calculated  
24 United Member 6's BMI at 40. While there is no weight recorded for United  
25 Member 6 on the day of surgery, United Member 6's pre-operative weight, 235,  
26 combined with United Member 6's new height, results in a BMI of just 34.7. Even  
27 assuming United Member 6 stood 5'9", United Member 6 would have had to *gain*  
28 36 pounds in preparation for weight loss surgery in order to reach a BMI of 40.

1       263. At the time of the surgery, United Member 6 carried a driver's license  
2 that listed United Member 6 as standing 5'10" and weighing 220 pounds, a  
3 height/weight combination that translates to a BMI of 31.6.

4       264. As described in full detail above, Counterclaim Defendants  
5 subsequently billed United more than \$60,000 in total charges related to the Lap  
6 Band surgery (that was fraudulently billed as hiatal hernia surgery) and for several  
7 Lap Band follow-up examinations and adjustments.

8                   **3. United Member 14**

9       265. Additionally, United Member 14 underwent Lap Band surgery on XX,  
10 2011. Counterclaim Defendants submitted claims for Valley Surgical Center, West  
11 Hills Surgery Center/Dr. Au Lee, and Dr. Julius Gee in connection with the Lap  
12 Band surgery.

13       266. The Operative Report submitted in connection with these claims states  
14 that United Member 14's BMI on the day of the surgery was 35.3. However, the  
15 report prepared by the anesthesiologist working on behalf of Counterclaim  
16 Defendants records show that, on the day of this surgery, United Member 14 was  
17 5'4" and weighed 190 pounds, giving United Member 14 a calculated BMI of 32.6  
18 on the day of the surgery. United Member 14 would need to weigh a full 15 pounds  
19 more to reach the reported BMI of 35.3.

20       267. In reliance on the representations made in the operative report, on XX,  
21 2011 United paid \$3,100 toward the claim submitted for services provided by  
22 assistant surgeon Dr. Julius Gee for this procedure.

23       268. Notably, Counterclaim Defendants inflated the BMI calculation of  
24 United Member 14 enough to rise above 35. Had United Member 14's BMI been  
25 recorded accurately as 32.6, United Member 14 would not have been eligible for  
26 Lap Band surgery under the terms of United Member 14's health benefit plan.  
27 United Member 14's actual BMI further fell short of the industry standard  
28 minimum BMI of 35-40 that is ordinarily required for Lap Band surgery to be

1       deemed medically necessary and to qualify as a covered expense, when it is not  
2       excluded.

3       269. This practice of submitting operative reports and other medical  
4       records with false BMI calculations is not limited to these United Members. United  
5       has uncovered many other instances where Members' Lap Band operative notes do  
6       not accurately reflect the Members' BMI calculation on the day of surgery, when  
7       compared with the height and weight recorded by Counterclaim Defendants and  
8       used for anesthesia purposes on the day of surgery. This includes, for example, one  
9       member whose BMI was wrongly recorded as 39, when her BMI on the day of  
10       surgery was actually 34.9. Like the other United Members referenced herein,  
11       United Members 6, 7 and 14 are examples that are representative of Counterclaim  
12       Defendants' fraudulent billing practices designed to obtain payment from United  
13       for unauthorized services.

14       270. Additional members not addressed in detail here have also informed  
15       United that they were told the Counterclaim Defendants' services would be covered  
16       entirely by insurance with no out-of-pocket expenses to the member; that they  
17       received bills from the Counterclaim Defendants for services that never happened  
18       or from clinics where they were never treated; that they were double billed by the  
19       Counterclaim Defendants for services they received only once; that they were billed  
20       for office visits that actually took place over the phone; and that they were billed for  
21       extended appointments that in fact were much shorter.

22       271. Finally, Counterclaim Defendants have purported to submit  
23       assignment of benefit forms which were invalid because they were unsigned,  
24       undated, or which lacked vital information, including the names of the assignees.  
25       These assignment-of-benefits forms are invalid on their face.

26       272. In sum, the Counterclaim Defendants engaged in a pattern and practice  
27       of submitting false and fraudulent bills to United that (a) were fraudulently inflated  
28       due to the Counterclaim Defendants' waiver of co-pays and other patient

1 responsibility obligations; (b) were illegally induced by the Counterclaim  
2 Defendants' agreement to waive copays and other Member Responsibility  
3 Amounts, which resulted in the United members receiving either medically  
4 unnecessary care, or care that would have been provided by an in-network provider  
5 at lower cost to the United Plans or United had this waiver not occurred; (c)  
6 submitting claims to United for medical services rendered, where the Counterclaim  
7 Defendants knew that the health plans would not make payments for charges where  
8 the provider waived the copays and other Member Responsibility Amounts; (d)  
9 fraudulently inflating the billed charges for certain procedures, in situations where  
10 the Counterclaim Defendants were informed that the United member did not have  
11 coverage for the Lap Band surgery; and (e) attempting to mask the performance and  
12 expense of Lap Band surgeries by labeling the procedures as another, purportedly  
13 medically necessary and covered, and submitting falsified medical records to  
14 further cover up the fraud.

- i. Counterclaim Defendants Submitted Claims and Wrongfully Induced United to Pay Amounts That Were Greater Than their Normal Cash Charges or the Usual, Customary, and Reasonable Charges for the Same Procedures

19       273. During the time relevant to this action, the Counterclaim Defendants  
20 were out-of-network providers with respect to United, meaning United did not have  
21 a contract with the Counterclaim Defendants governing reimbursement for the  
22 services they rendered to United members.

23        274. As noted earlier, all or virtually all health benefit plans administered  
24 by United limit reimbursement of out-of-network providers to a specified  
25 percentage of “eligible expenses.”

26       275. Beginning in 2008, the Counterclaim Defendants routinely submitted  
27 excessive and unreasonable charges to United for a variety of procedures and visits,  
28 including but not limited to Lap Band and other endoscopy procedures (CPT codes

1 43239, 43770, and 47562), in an attempt to induce United to authorize payment to  
2 the Counterclaim Defendants for amounts well in excess of the “eligible” or “usual,  
3 customary and reasonable” charges covered under the terms of the plans  
4 administered by United as claims administrator.

5 276. For example, the Counterclaim Defendants, including Almont ASC,  
6 Beverly Hills Surgery Center, Modern Institute, and Valley Surgical Center,  
7 routinely submitted bills to United for Lap Band placements (CPT code 43770)  
8 with charge amounts in excess of \$60,000, which is more than 300% greater than a  
9 reasonable charge for this procedure. The Counterclaim Defendants felt free to  
10 submit such excessive and unreasonable charges, having told their patients that they  
11 would not have to pay copays or otherwise pay for the care being provided.

12 277. Further, United is informed and believes that Counterclaim Defendants  
13 billed Lap Band patients willing to pay cash substantially less than patients with  
14 insurance. Indeed, upon information and belief, Counterclaim Defendants charged  
15 cash patients only \$18,000 for Lap Band surgery while they simultaneously charged  
16 some patients covered by health plans more than \$90,000 or \$100,000 in facility  
17 charges and professional fees for such surgery. United is further informed and  
18 believes that former Lap Band manufacturer Allergan estimated that a Lap Band  
19 procedure should cost between \$12,000 and \$20,000.

20 278. The Counterclaim Defendants succeeded in their attempts to induce  
21 United to authorize payment to the Counterclaim Defendants for amounts well in  
22 excess of the “eligible” or “usual, customary and reasonable” charges covered  
23 under the terms of the plans administered by United as claims administrator.

24 279. For example, for CPT codes 43239, 43770 & 47562, the aggregate  
25 overpayments received by the Counterclaim Defendants are in excess of  
26 \$10,000,000. Accordingly, if the waiver of Member Responsibility Amounts did  
27 not eliminate altogether the obligation to make any payment to the Counterclaim  
28 Defendants under the terms of the plans administered by United as claims

1 administrator, the Counterclaim Defendants would still be liable to reimburse  
2 United, on behalf of the plans administered by United as claims administrator, for  
3 such overpayments, with the precise amount of overpayments to be proven at trial.  
4

5 280. Because these overpayments were in excess of what was required to be  
6 paid under the terms of the plans administered by United, United seeks restitution  
7 of these overpayments.

8 **ii. United Paid Numerous Claims In Good Faith Based On  
Counterclaim Defendants' Misrepresentations**

9 281. United reasonably relied on the misrepresentations contained on the  
10 claim forms submitted by Counterclaim Defendants, and in good faith paid not only  
11 the claims of the exemplars above, but also thousands of claims based on those  
12 misrepresentations. Just as with the exemplars, Counterclaim Defendants  
13 submitted intentionally misleading and fraudulent claims that: (i) inflated the  
14 claimed amount because of Counterclaim Defendants' waiver of co-pays and other  
15 Member Responsibility Amounts; (ii) were for medical procedures that (as  
16 Counterclaim Defendants knew) were not eligible for coverage under the health  
17 benefit plans because of the Counterclaim Defendants decision to waive Member  
18 Responsibility Amounts, and promise to accept whatever United paid as full  
19 payment for the services; (iii) failed to disclose that co-payments and other forms of  
20 patient responsibility had been waived; (iv) sought payment for services which  
21 were charged using inflated CPT codes; (v) sought payment for services which  
22 were never performed; (vi) masked the cost and expense of Lap Band surgeries by  
23 labeling the procedures as a different, covered expense and submitting inflated  
24 claims for the covered procedures; and (vii) sought exorbitant payments.  
25 Counterclaim Defendants also submitted intentionally misleading and fraudulent  
26 claims for medical procedures that they knew would not be covered by the health  
27 plans because of their decision to waive co-pays and other patient responsibilities.  
28 In directing that payments be made to the Counterclaim Defendants, United relied

1 upon the truthfulness and accuracy of the claims information submitted by the  
2 Counterclaim Defendants, which it believed to be correct at the relevant time.  
3

4 **FIRST CAUSE OF ACTION**  
5 **(Fraud)**  
6 **(Against All Counterclaim Defendants)**

7 282. United realleges and incorporates herein by reference each and every  
8 allegation contained in paragraphs 1 through 281, inclusive, hereinabove.  
9

10 283. Counterclaim Defendants did knowingly and willfully execute a  
11 scheme and artifice to defraud United by submitting, and collecting on, fraudulent  
12 health insurance claims, and to obtain by means of false and fraudulent pretenses,  
13 representations and promises, money and property owned by, or under the custody  
14 or control of United, in connection with the delivery of or payment for health care  
15 benefits, items, or services.  
16

17 284. Counterclaim Defendants had knowledge of the wrongful scheme and  
18 intended to defraud United, despite their legal duty to submit timely and accurate  
19 insurance claims.  
20

21 285. In furtherance of the scheme and artifice to defraud, Counterclaim  
22 Defendants submitted:  
23

24 a) Fraudulent claims that failed to disclose that  
25 Defendants had waived some or all of the member's co-pay,  
26 deductible, or other financial responsibility;  
27

28 b) Fraudulent claims that misrepresented the nature of  
29 the procedure performed, or in some cases, completely failed to  
30 disclose that the member received a gastric Lap Band;  
31

32 c) Fraudulent claims that sought payment for services  
33 which were charged using inflated CPT codes;  
34

35 d) Fraudulent claims that sought payment for services  
36 which were never performed;  
37

- e) Fraudulent claims that inflated the member's BMI in order to receive secure coverage for the Lap Band surgery; and
- f) Fraudulent claims that demanded exorbitant fees far in excess of the usual and customary rate.

286. Counterclaim Defendants' scheme and artifice to defraud succeeded in inducing United to pay these fraudulent claims. As a direct and proximate cause of this scheme, United paid millions in fraudulent claims.

287. Counterclaim Defendants made false representations of material fact to United in submitting claim forms to United. Specifically, Counterclaim Defendants submitted intentionally misleading and fraudulent claims that: (i) inflated the claimed amount because of Counterclaim Defendants' waiver of co-pays and other patient responsibility obligations; (ii) failed to disclose the waived Member Responsibility Amount; (iii) inflated the cost of certain covered procedures, in situations where the Counterclaim Defendants were informed that the United member did not have coverage for the Lap Band surgery; (iv) sought payment for services which were charged using inflated CPT codes; (v) sought payment for services which were never performed; and (vi) masked the cost and expense of Lap Band surgeries by labeling the procedures as another, purportedly medically necessary and covered procedure. Counterclaim Defendants also submitted to United intentionally misleading and fraudulent claims and medical records for medical procedures that they knew would not be covered by the health plans because of their decision to waive co-pays and other patient responsibilities.

288. At the time Counterclaim Defendants submitted these materially misleading and fraudulent claims and medical records to United, Counterclaim Defendants knew the falsity of such representations. Counterclaim Defendants (for example) knew at the time they submitted such claims that the Counterclaim Defendants had not actually charged the members the amounts stated in the claims

1 as the billed charge and that the members had not agreed to pay such amounts if  
2 Counterclaim Defendants did not receive payment from United.  
3

4 289. Counterclaim Defendants submitted the claims to United with the  
5 intent to induce United to rely on the false statements as to the amount charged to  
6 the members and, therefore, pay to Counterclaim Defendants an amount that was  
7 (in the aggregate) millions in excess of the actual amount charged to the members  
8 or the rate regularly charged by the Counterclaim Defendants to cash-paying  
9 patients. United reasonably relied on the false statements contained in the claims  
10 submitted by Counterclaim Defendants as to the amount charged to the members.  
11 Based upon such reliance, United paid to Counterclaim Defendants amounts based  
12 on the billed charges in the claims, when, in fact, the Counterclaim Defendants had  
13 not actually charged such amounts to the members.

14 290. As a result of Counterclaim Defendants' fraudulent conduct, United  
15 (and the group health plans it administers) have been damaged by paying to  
16 Counterclaim Defendants amounts far in excess of the amount actually charged to  
17 the members. The total amount of such damage will be proven at trial.

18 291. Counterclaim Defendants further made false representations of  
19 material fact to United in submitting claim forms and medical records to United that  
20 sought payment for unauthorized Lap Band surgeries and adjustments by  
21 concealing the Lap Band treatments as other treatments, *i.e.*, hernia surgeries and  
22 general office visits.

23 292. At the time Counterclaim Defendants submitted these materially  
24 misleading and fraudulent claims and medical records to United, Counterclaim  
25 Defendants knew the falsity of such representations. Counterclaim Defendants  
26 knew that the claims seeking payment for hernia surgery and/or office visits  
27 *actually* sought payment for unauthorized Lap Band treatments. Counterclaim  
28 Defendants submitted the claim forms and falsified medical records to United with  
the intent to induce United to rely on the false statements as to the services provided

1 to the members and, therefore, pay to Counterclaim Defendants an amount that was  
2 tens of thousands of dollars in excess of the actual amount charged for hernia  
3 surgery and follow-up visits.

4 293. United reasonably relied on the false statements contained in the  
5 claims submitted by Counterclaim Defendants. Based upon such reliance, United  
6 paid to Counterclaim Defendants amounts based on the billed charges in the claims,  
7 when, for example, the Counterclaim Defendants had not actually charged such  
8 amounts to the members, had secretly misrepresented the procedures performed,  
9 and inflated charges for such procedures. As a result of Counterclaim Defendants'  
10 fraudulent conduct, United (and the group health plans it administers) have been  
11 damaged by paying to Counterclaim Defendants amounts far in excess of what  
12 United would have otherwise paid. The total amount of such damage will be  
13 proven at trial. Alternatively, United requests that the sums that it seeks be  
14 awarded as a set off to any amounts United (or the group health plans it  
15 administers) owes to Counterclaim Defendants on any outstanding claims.

16 294. United is informed and believes that Counterclaim Defendants acted  
17 intentionally in conscious disregard of the rights of United and the group health  
18 plans it administers, with malice, oppression, and fraud in that Counterclaim  
19 Defendants knew that its acts and conduct, as alleged hereinabove, were fraudulent  
20 and unjustified and would result in severe financial and economic injury to United.  
21 Accordingly, United is entitled to an award of punitive damages against  
22 Counterclaim Defendants for the sake of example and by way of punishing  
23 Counterclaim Defendants. The amount of such punitive damages should be  
24 determined at the time of trial of this action.

25 **SECOND CAUSE OF ACTION**  
26 **(Unfair Business Practices, Business & Professions Code § 17200)**  
27 **(Against All Counterclaim Defendants)**

28 295. United realleges and incorporates herein by reference each and every  
allegation contained in paragraphs 1 through 294, inclusive, hereinabove.

1       296. Counterclaim Defendants' submission to United of false claims,  
2 including waiving Member Responsibility Amounts, is an unlawful, unfair, and  
3 fraudulent business practices in violation of California Business & Professions  
4 Code § 17200, *et seq.* This conduct violates state and federal prohibitions on the  
5 submission of false claims to insurers/health plans, including Cal. Bus & Prof.  
6 Code § 810, Cal. Penal Code §§ 532, 550, 18 U.S.C. § 1347, and HIPAA.

7       297. In addition to being false and fraudulent, the amounts purported to be  
8 charged by the Counterclaim Defendants were unconscionable in that they are so  
9 exorbitant and wholly disproportionate to the services performed as to shock the  
10 conscience of physicians of ordinary prudence practicing in the same community.

11       298. Further, Counterclaim Defendants' scheme to own and operate the  
12 network of clinics and surgery centers described herein further constitutes unlawful  
13 and unfair business practice in violation of California Business & Professions Code  
14 § 17200, *et seq.* This conduct violates state prohibitions on the corporate practice  
15 of medicine, including Cal. Bus. & Prof. Code § 2400 *et seq.*, which prohibits  
16 unlicensed medical professionals from owning and operating a medical practice,  
17 and Cal. Bus. & Prof. Code § 2254, which prohibits the aiding and abetting of the  
18 unlicensed practice of medicine.

19       299. Counterclaim Defendants' payment of incentives to physicians for  
20 patient referrals is an unlawful and unfair business practice in violation of Cal. Bus.  
21 & Prof. Code § 17200, *et seq.* This conduct violates Cal. Bus. & Prof. Code  
22 § 650(a), which prohibits the payment of incentives to physicians for patient  
23 referrals. Counterclaim Defendants, including Michael Omidi, offered and  
24 delivered compensation to licensed physicians as an inducement to perform  
25 procedures at Omidi-owned surgery centers. These illegal incentives interfered with  
26 the professional independence of the participating physicians in determining the  
27 proper surgical facilities for their patients.

300. Counterclaim Defendants' conduct and scheme to defraud offends the established public policy of California to protect consumers and is unethical, oppressive, unscrupulous, immoral, and substantially injurious to California consumers.

301. United and the group health plans it administers have been subjected to and injured by Counterclaim Defendant's unlawful conduct, including Counterclaim Defendants' routine waiver of co-pay or other patient financial responsibility, and the corporate practice of medicine; fraudulent conduct, including falsified medical and claims records which purport to bill for services that were not medically necessary or were never rendered, that conceal services rendered, or that substantiate services based on false BMI measurements; and unfair practices, including promises to patients that they would not incur any out of pocket expenses, regardless of what insurance required, and that the Counterclaim Defendants would look solely to insurance for payment.

302. As a party harmed by the Counterclaim Defendants' actions, United (and the group health plans it administers) are entitled to obtain restitution from and injunctive relief against Counterclaim Defendants. Alternatively, United requests that the sums that it seeks be awarded as a set off to any amounts United (or the group health plans it administers) owes to Counterclaim Defendants on any outstanding claims.

**THIRD CAUSE OF ACTION  
(Conspiracy to Commit Fraud)  
(Against All Counterclaim Defendants)**

303. United realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 302, inclusive, hereinabove.

304. For many years, and continuing through the present, Counterclaim Defendants did knowingly and willfully combine, conspire, confederate, and agree with each other and with others, known and unknown, to execute a scheme and

1 artifice to defraud United by submitting and collecting on fraudulent health  
2 insurance claims and medical records, and to obtain by means of false and  
3 fraudulent pretenses, representations and promises, money and property owned by,  
4 and under the custody and control of United, in connection with the delivery of or  
5 payment for health care benefits, items, or services.

6 305. Counterclaim Defendants orchestrated the wrongful scheme and  
7 intended to defraud United, despite their legal duty to submit timely and accurate  
8 insurance claims.

9 **Purpose of the Conspiracy**

10 306. It was a purpose of the conspiracy for Counterclaim Defendants to  
11 unlawfully enrich themselves by, among other things, submitting intentionally  
12 misleading and fraudulent claims that:

- 13 a) Inflated the claimed amount because of Counterclaim Defendants'  
14 waiver of co-pays and other patient responsibility obligations;
- 15 b) Omitted a disclosure regarding the waived co-pays and patient  
16 responsibilities;
- 17 c) Inflated the billed charges and concealed the performance of certain  
18 procedures, in situations where the Counterclaim Defendants were  
19 informed that the United member did not have coverage for the Lap  
20 Band surgery;
- 21 d) Masked the performance and expense of Lap Band surgeries by  
22 labeling the procedures as another, purportedly medically necessary  
23 and covered procedure;
- 24 e) Sought payment for services which were charged using inflated  
25 CPT codes;
- 26 f) Sought payment for services which were never performed; and

g) Concealed the fact that Counterclaim Defendants knew that the submitted claim was not covered by the health plans because of their decision to waive co-pays and other patient responsibilities.

## **Manner and Means of the Conspiracy**

307. The manner and means by which Counterclaim Defendants and other co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

- a) United is informed and believes that the Omidis conspired to create Top Surgeons, 1-800-GET-THIN, LLC, Counterclaimant Defendants, and the other members of the Omidi Network as organizations to fraudulently market and sell Lap Band surgeries and related services.
- b) Top Surgeons, 1-800-Get-Thin, LLC and/or other corporate entities owned, operated, or controlled by the Omidis (including the Omidi Network) employs call center staff to encourage prospective patients to attend “free” orientations, consultations, and examinations.
- c) These initial “free” meetings with prospective patients are ostensibly to determine whether the prospective patient is a suitable candidate for Lap Band surgery. In furtherance of the conspiracy, United is informed and believes that the primary purpose of these initial sessions is to determine whether the prospective patient carries adequate health insurance.
- d) Once a prospective patient is identified and cleared to undergo surgery, the Omidis, and the corporate entities that they own, manage, and/or control (including the Omidi Network and the co-conspirators alleged herein) conspire to refer these patients to physicians who are under contract with Top Surgeons, 1-800-Get-

1 Thin, LLC, or other co-conspirators known or unknown. United is  
2 informed and believes that these physicians perform subsequent  
3 examinations and procedures at Counterclaim Defendant surgical  
4 centers that are owned, managed, operated, or controlled by the  
5 Omidis, and the Omidi Network.

6 e) In furtherance of the conspiracy, United is informed and believes  
7 that the Omidis instruct their affiliated physicians to perform  
8 medically unnecessary, costly, and unauthorized surgical  
9 procedures, such as EGDs, as a means to artificially and  
10 fraudulently inflate claims to insurers such as United.  
11 f) Following a surgical procedure, Counterclaim Defendants submit  
12 or cause to be submitted fraudulent insurance claims to United for  
13 unnecessary medical procedures or procedures that are not fully  
14 documented. Counterclaim Defendants also submit insurance  
15 claims and/or medical records that fraudulently misrepresent the  
16 nature and complexity of the services provided, seek payment for  
17 services which were never rendered, and misrepresent a member's  
18 BMI or other pertinent information that bears upon United's  
19 obligation to pay benefits under the member's health plan.

20 308. Counterclaim Defendants' conspiracy succeeded in inducing United to  
21 pay these fraudulent claims. As a direct and proximate cause of this conspiracy,  
22 United paid millions in fraudulent claims. United therefore seeks all damages  
23 incurred as a result of the Counterclaim Defendants' wrongful conduct on behalf of  
24 itself and the group health plans it administers. Alternatively, United requests that  
25 the sums that it seeks be awarded as a set off to any amounts United (or the group  
26 health plans it administers) owes to Counterclaim Defendants on any outstanding  
27 claims.

# **FOURTH CAUSE OF ACTION**

## **(Intentional Interference with Contractual Relationships)**

### **(Against All Counterclaim Defendants)**

309. United realleges and incorporates by reference Paragraphs 1 through 308 as though fully set forth herein.

310. As alleged above, the Counterclaim Defendants were aware that health benefit plans generally include provisions precluding participants from accepting services from providers in return for a waiver of Member Responsibility Amounts. By nevertheless inducing United members to accept services with the Counterclaim Defendants by promises that they would waive patient responsibilities and accept whatever payment their health benefit plan would pay – in most instances without the United member even knowing that this relationship was illegal or a violation of Plan terms – the Counterclaim Defendants caused the United members to violate the terms of their health benefit plans. By doing so, Plaintiffs' illegally interfered with the contract between United Members, the group health plans in which they participate, and (in certain instances) United as insurer.

311. In many cases, the actions constituting the tortious interference alleged herein occurred before any of the purported assignments of benefits were effectuated. Prior to assigning benefits, patients were induced to undergo Lap Band procedures with promises that they would not be responsible for their co-payment or other financial responsibility amounts and by failing to disclose that these patient financial responsibility amounts were being improperly waived. These actions caused a disruption in, or breach of, the contractual relationship between United and its insured.

312. Further, many of the assignments of benefits that Counterclaim Defendants purported to submit to United were blank or otherwise invalid.

313. Additionally, many of the plans for which United serves as insurer or Claims Administrator contain provisions which prohibit the assignment of claims.

314. Further, by accepting assignments from, and acting as authorized representatives of the United members, and then submitting false or inflated bills for services, the Counterclaim Defendants illegally interfered with the contractual relationship between United and its members.

315. United (and the group health plans it administers) therefore seeks all damages incurred as a result of the Counterclaim Defendants' intentional interference, including (but not limited to) damages in the amount of overuse of health plan benefits resulting from the illegal inducement, as well as damages in the amount of the fraudulent billings. Alternatively, United requests that the sums that it seeks be awarded as a set off to any amounts United (or the group health plans it administers) owes to Counterclaim Defendants on any outstanding claims.

**FIFTH CAUSE OF ACTION  
(Restitution under ERISA § 502(a)(3)  
(Against All Counterclaim Defendants)**

316. United realleges and incorporates by reference Paragraphs 1 through  
315 as though fully set forth herein.

317. The Plans listed in Appendix I are all employer sponsored group health plans governed by ERISA.

318. For all (or virtually all) of the ERISA Plans, one of the United Counterclaimants in this matter has been delegated by the respective plan's Plan Administrator the fiduciary responsibility and discretion to decide claims under the terms of the Plan ("Claims Administrator."). In all such instance, the Plan document in question will delegate to a United Counterclaimant discretionary authority to resolve participants' claims for benefits under the Plan. United's authority to decide claims is final and binding, subject only to judicial review (or independent external review mandated by state law or the Affordable Care Act). In performing its duties as a Claims Administrator United acts as – and explicitly

1 acknowledges that it is – an ERISA fiduciary as that term is defined in ERISA §  
2 3(21).

3 319. For example, one of the exemplar United Members identified herein  
4 was covered under the Whole Foods Market Group Benefit Plan. The Whole Foods  
5 Market Group Benefit Plan Document specifically names UnitedHealthcare  
6 Insurance Company as the Claims Administrator for the Plan, requires participants  
7 to file claims for benefits with UnitedHealthcare Insurance Company, and delegates  
8 to UnitedHealthcare Insurance Company the “sole and absolute discretion” to:

- 9 • Interpret the terms of the relevant ERISA Plan;
- 10 • Interpret the other terms, conditions, limitations and exclusions of the  
11 Benefit Program, including this SPD;
- 12 • Make factual determinations related to the Benefit Program and  
13 Benefits;
- 14 • Review claims for benefits under the terms of the Plan, and decide  
15 appeals as required by ERISA § 503 (and associated regulations  
16 promulgated by the DOL);

18 320. Furthermore, under the UnitedHealthcare Insurance Company  
19 Administrative Services Agreement with Whole Foods, UnitedHealthcare Insurance  
20 Company is appointed “a named, ERISA fiduciary under the Plan with respect to (i)  
21 performing claim processing and payment, (ii) performing the fair and impartial  
22 review of initial appeals, and (iii) performing the fair and impartial review of final  
23 appeals,” and is delegated “the discretionary authority to (i) construe and interpret  
24 the terms of the Plan, (ii) to determine the validity of charges submitted to [United]  
25 under the Plan, and (iii) make final, binding determinations concerning the  
26 availability of the Plan benefits.” Under its ASA’s such as this one, United is  
27 accountable to its sponsoring employers for proper performance of its contractual  
28 duties.

1       321. Further, one of the exemplar United Members identified herein was  
2 covered under a medical plan with Travelers, which provides that UnitedHealthcare  
3 Insurance Company is the named Claims Fiduciary, with discretionary authority to  
4 resolve claims for benefits under the terms of the Plan, and to make all factual and  
5 other determinations regarding the availability of plan benefits. Likewise, the  
6 Administrative Services Agreement between United and Traveler's states that  
7 UnitedHealthcare Insurance Company is a "Named Claims ERISA Fiduciary"  
8 under the Plan and it has "discretionary authority" to decide claims and appeals of  
9 claims under ERISA's claim regulations, and to "(I) make any and all factual  
10 determinations and interpret all terms and provisions of the Plan, SPD, and related  
11 documents relevant to the issue under consideration, and (II) make final, binding  
12 determinations concerning the availability of Plan Benefits."

13       322. By further example, one of the exemplar United Members identified  
14 herein was covered under a medical plan with Time Warner. The Plan document in  
15 question delegates to UnitedHealthcare Insurance Company the discretionary  
16 authority to resolve all claims for benefits under the terms of the plan. The  
17 Administrative Services Agreement between UnitedHealthcare Insurance Company  
18 and AOL Time Warner, Inc. provides that UnitedHealthcare Insurance Company is  
19 a "named, ERISA fiduciary under the Plan with respect to Plan claims adjudication  
20 activities...including performing claim processing and payment" including  
21 prospective fraud and abuse detection and control. Further, UnitedHealthcare  
22 Insurance Company is delegated "the discretionary authority to (a) construe and  
23 interpret the terms of the Plan, (b) to determine the validity of charges submitted to  
24 us under the Plan, and (c) make final, binding determinations concerning the  
25 availability of Plan benefits."

26       323. The ERISA Plans in question typically include language requiring that  
27 any overpayments that are made to patients, or (on their behalf) to providers must  
28 be returned. For example, one typical ERISA Plan states that "[t]he Plan reserves

1 the right to recover any payments made by the Plan that were . . . [m]ade in error; or  
2 . . . [m]ade to any Covered Person or any party on a Covered Person's behalf where  
3 . . . the payment to the Covered Person or any party is greater than the amount  
4 payable under this Plan. The Plan has the right to recover against Covered Persons  
5 if the Plan has paid them or any other party on their behalf."

6 324. As a part of its duties as a Claims Administrator, the relevant United  
7 entity also has the contractual duty to not only review claims, but also to attempt to  
8 recover overpayments made by the ERISA plans, including those made to patients  
9 and medical providers, whether these payments result from fraudulent behavior or  
10 otherwise. For example, UnitedHealthcare Insurance Company's Agreement with  
11 AOL Time Warner gives United the authority to engage in "recovery services for  
12 Overpayments" for AOL Time Warner's plan. Its duties as a Claims Administrator  
13 thus give it the right and responsibility to ensure that the Plan is properly  
14 administered, that only proper payments are made on behalf of the plans, and to  
15 ensure that overpayments made to providers are recovered.

16 325. These, or materially indistinguishable, terms are included in the Plan  
17 documents and ASAs for all (or virtually all) of the ERISA Plans included in  
18 Appendix I.

19 326. As a result of the wrongful behavior listed above, United has paid out  
20 millions in benefits to the Counterclaim Defendants. United acts (among other  
21 things) as a fiduciary of the Plan and as a party with an interest in the proper  
22 administration of the Plan and its duties under the terms of the group health plans  
23 and the applicable ASAs. As such, United has standing to sue under ERISA §  
24 502(a)(3) for the ERISA Plans, to obtain equitable relief to redress violations of  
25 such ERISA Plans, or to enforce the terms of the ERISA Plans.

26 327. As alleged above, Counterclaim Defendants have engaged in a scheme  
27 of submitting intentionally misleading, and fraudulent claims that: (i) inflated the  
28 claimed amount because of Counterclaim Defendants' waiver of co-pays and other

1 Member Responsibility Amounts; (ii) were for medical procedures that (as  
2 Counterclaim Defendants knew) were not eligible for coverage under the health  
3 benefit plans because of the Counterclaim Defendants decision to waive Member  
4 Responsibility Amounts, and promise to accept whatever United paid as full  
5 payment for the services; (iii) failed to disclose that co-payments and other forms of  
6 patient responsibility had been waived; (iv) sought payment for services which  
7 were charged using inflated CPT codes; (v) sought payment for services which  
8 were never performed; (vi) masked the cost and expense of Lap Band surgeries by  
9 labeling the procedures as a different, covered expense and submitting inflated  
10 claims for the covered procedures; and (vii) sought exorbitant payments. Based  
11 upon the inflated claims submitted to United, Counterclaim Defendants received  
12 amounts in excess of the amounts that they actually charged for those services, and  
13 that would have been incurred by United Members.

14       328. Further, even to the extent that the Counterclaim Defendants did not  
15 knowingly and intentionally submit false or inflated bills to United, United is  
16 entitled to equitable relief to enforce the terms of the Plans and recover these  
17 overpayments. This is particularly true where the Counterclaim Defendants  
18 submitted claims of Plan Members of ERISA Plans pursuant to valid contractual  
19 assignments (or authorized representation agreements) received from United  
20 Members. In such instances, the Counterclaim Defendants accepted the terms of  
21 the ERISA Plans and submitted their claims subject to those terms. Further, by  
22 knowingly accepting payments from the Plan, the Counterclaim Defendants became  
23 bound by the Plan's terms and conditions, including conditions related to  
24 overpayments. The ERISA Plans, by their terms, require the return of  
25 overpayments and amounts that were erroneously paid. Thus, even to the extent  
26 that the Counterclaim Defendants did not intentionally overcharge United, United is  
27 still entitled to equitable relief to enforce the terms of the Plan and recover these  
28 overpayments.

1       329. As a result of the fraudulent scheme to inflate their charges and waive  
2 in full or in part Member Responsibility Amounts, Counterclaim Defendants  
3 induced United to overpay each and every of such claims submitted by  
4 Counterclaim Defendants. United (on behalf of the ERISA Plans it administers) is  
5 entitled to recover these overpayments and seeks restitution of the amounts it  
6 overpaid. Among other things, United seeks restitution in the total amount of the  
7 payments made to Counterclaim Defendants on behalf of patients to whom the  
8 Counterclaim Defendants promised that they would waive any Member  
9 Responsibility Amounts. United also (and alternatively) seeks to recover the  
10 amounts paid to the Counterclaim Defendants resulting from their fraudulent  
11 invoices, such as for unnecessary care, or invoices that mask the actual services  
12 provided. United further seeks to recover all amounts paid in excess of the usual,  
13 customary, or reasonable charges for the services at issue, for payments that exceed  
14 the Counterclaim Defendants' discounted, cash price for the services at issue, or  
15 payments that were otherwise not consistent with the terms of the Plan, as well as  
16 any other excessive payments made as detailed in greater depth above.

17       330. The various overpayments referenced above paid by United to  
18 Counterclaim Defendants were deposited into bank accounts that have been  
19 identified by United.

20       331. As detailed above, these payments have deposited into accounts with  
21 Wells Fargo Bank, including the accounts identified previously in this  
22 Counterclaim.

23       332. United is informed and believes that some or all of the  
24 overpayments/payments procured by fraud remain in these accounts. To the extent  
25 that some portion of these payments have been removed from these accounts, those  
26 exact same sums were transferred to, and remain in, other bank accounts within the  
27 possession, custody, and control of the Counterclaim Defendants.

333. United is entitled to the imposition of a constructive trust on the assets that the Counterclaim Defendants received through fraud or as a result of excessive or inflated payments, as well as on any profits or income made by Counterclaim Defendants through the use of those amounts held in constructive trust. United is also entitled to an Order restoring to United on its own behalf and on behalf of ERISA Plans the sums held in constructive trust by Counterclaim Defendants. As noted, upon information and belief, United believes that the sums that the Counterclaim Defendants overcharged United are still in the possession, custody or control of the Counterclaim Defendants.

334. Further, an equitable lien, either implied or by agreement, exists on the amounts United overpaid or paid in error to Counterclaim Defendants in reliance on the fraudulent claims. Upon information and belief, United believes that the sums that the Plaintiffs overcharged United are still in the possession, custody or control of the Counterclaim Defendants.

335. Restitution and trust remedies include, among other things, return of the amounts paid by United based on the fraudulent claims. United seeks return of monies paid to Counterclaim Defendants on behalf of the ERISA Plans that constituted overpayments or erroneous payments. Alternatively, United requests that the sums that it seeks be awarded as a set off to any amounts United (or the group health plans it administers) owes to Counterclaim Defendants on any outstanding claims.

**SIXTH CAUSE OF ACTION  
(For Declaratory and Injunctive Relief  
under ERISA §502(a)(3))  
(Against All Counterclaim Defendants)**

336. United realleges and incorporates by references Paragraphs 1 through  
335 as though fully set forth herein.

337. United acts as claims fiduciary nearly all of the ERISA Plans included on Appendix I and has standing to sue under ERISA § 502(a)(3) for injunctive

1 relief to redress violations of such ERISA Plans or to enforce any provisions of  
2 these ERISA Plans.

3 338. Defendants have engaged in a scheme to defraud United into paying  
4 amounts to Counterclaim Defendants in excess of the amounts owed under the  
5 ERISA Plans, as discussed above.

6 339. United is entitled to a judicial declaration pursuant to ERISA §  
7 502(a)(3) that Counterclaim Defendants are not entitled to any additional payments  
8 from United or the ERISA Plans unless and until they reimburse United and the  
9 ERISA Plans for all amounts they wrongfully obtained as a result of their scheme to  
10 defraud United.

11 340. United further seeks a declaratory judgment decreeing the right, duties  
12 and obligations of the parties under the ERISA Plans.

13 341. United also seeks an order enjoining Counterclaim Defendants from  
14 billing United for amounts for which the Counterclaim Defendants had indicated  
15 they would waive Member Responsibility Amounts or otherwise accept payments  
16 from United or the Plans as full compensation for their services, or alternatively for  
17 an order enjoining the Counterclaim Defendants from billing United/the ERISA  
18 Plans for amounts which do not reflect the failure to collect Member Responsibility  
19 Amounts that are in violation of any plan terms or provisions, or that in any other  
20 way artificially inflate amounts.

21 342. United also seeks a constructive trust or equitable lien on the monies  
22 currently held by Counterclaim Defendants as a result of the overpayments by  
23 United, an order restoring the overpayments currently being held by Counterclaim  
24 Defendants in constructive trust or pursuant to an equitable lien, and other  
25 appropriate equitable relief.

26 343. Finally, United requests injunctive relief precluding the Counterclaim  
27 Defendants from profiting from their promise to waive Member Responsibility  
28 Amounts, or from seeking to recover sums that would be inconsistent with those

1 promises. Alternatively, United requests that the sums that it seeks be awarded as  
2 a set off to any amounts United (or the group health plans it administers) owes to  
3 Counterclaim Defendants on any outstanding claims.  
4

5 **PRAYER FOR RELIEF**

6 WHEREFORE United prays for the following relief:

7 1. That judgment be entered in favor of United on its counterclaims  
8 against the Counterclaim Defendants in an amount exceeding \$75,000, exclusive of  
9 interests or costs.

10 2. That the Court issue equitable relief requiring the Counterclaim  
11 Defendants to return or repay to United all sums that were fraudulently or  
12 inappropriately paid to the Counterclaim Defendants, including, as appropriate, any  
13 set-off or recoupment against any amount recovered by Counterclaim Defendants in  
14 its Complaint.

15 3. For an injunction precluding the Defendants from submitting or  
16 receiving payment on false or fraudulent requests for payment, including all  
17 requests for payment related to patients to whom the Counterclaim Defendants  
18 represented or otherwise agreed that they would waive Member Responsibility  
19 Amounts or would otherwise not balance bill the patient.

20 4. For an order and injunction precluding the Counterclaim Defendants  
21 from profiting from their illegal promises to waive Patient Responsibility Amounts,  
22 including by seeking to enforce claims inconsistent with those promises.

23 5. For declaratory relief adjudicating the amounts owed to United, and  
24 that United is not obligated to pay for care or services that were illegally induced by  
25 the Counterclaim Defendants' promises to waive Member Responsibility Amounts,  
26 as well as a set off from any sums due to Counterclaim Defendants in this litigation  
27 or on any other outstanding claims.

28 6. That the Court award reasonable attorneys' fees, interest, and costs to

1 United.

2 7. Such other legal and equitable relief as this Court deems just and  
3 proper.

4  
5  
6 Dated: September 3, 2014

**WALRAVEN & WESTERFELD LLP**

7 By: /s/ Bryan S. Westerfeld  
8 BRYAN S. WESTERFELD

9  
10 Attorneys for Defendant UnitedHealth  
11 Group, Inc., and Counterclaim  
12 Plaintiffs/Defendants United Healthcare  
Services, Inc., United Healthcare  
Insurance Company, and OptumInsight,  
Inc.

13 Dated: September 3, 2014

**DORSEY & WHITNEY LLP**

14  
15 By: /s/ STEPHEN P. LUCKE  
16 STEPHEN P. LUCKE

17  
18 *Admitted Pro Hac Vice*  
19 Attorneys for Defendant UnitedHealth  
20 Group, Inc., and Counterclaim  
21 Plaintiffs/Defendants United Healthcare  
22 Services, Inc., United Healthcare  
23 Insurance Company, and OptumInsight,  
24 Inc.

## PROOF OF SERVICE

STATE OF CALIFORNIA      )  
COUNTY OF ORANGE      )      SS

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 101 Enterprise, Suite 350, Aliso Viejo, CA 92656.

On September 3, 2014, I served the foregoing document(s) described as

## COUNTERCLAIM

on all interested parties in this action as follows (or as on the attached service list):

DARON L. TOOCH  
BRYCE WOOLLEY  
**HOOPER, LUNDY & BOOKMAN, P.C.**  
1875 Century Park East, Suite 1600  
Los Angeles, California 90067-2517

E-Mail:  
[dtooch@health-law.com](mailto:dtooch@health-law.com)  
[bwoolley@health-law.com](mailto:bwoolley@health-law.com)

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the *CM/ECF* system. Participants in the case who are registered *CM/ECF* users will be served by the *CM/ECF* system. Participants in the case who are not registered *CM/ECF* users will be served by mail or by other means permitted by the court rules.

## AND

(VIA U.S. MAIL) I served the foregoing document(s) by U.S. Mail, as follows: I placed true copies of the document(s) in a sealed envelope addressed to each interested party as shown above. I placed each such envelope with postage thereon fully prepaid, for collection and mailing at Walraven & Westerfeld LLP, Aliso Viejo, California. I am readily familiar with Walraven & Westerfeld LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 3, 2014, at Aliso Viejo, California.

---

Kim Sullivan